MISSOURI LAWYER

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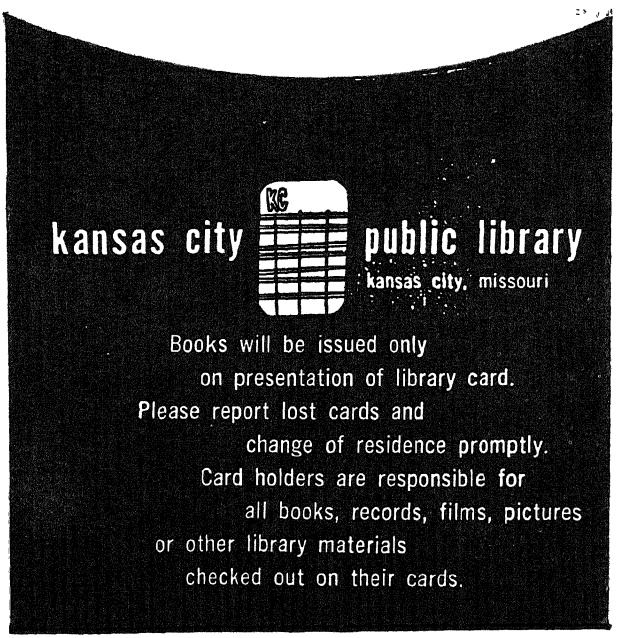

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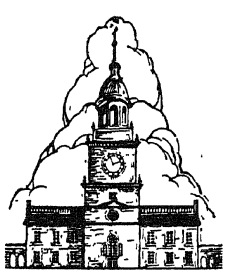
JOHN T. BARKER

MISSOURI LAWYER

By

JOHN T. BARKER

Of The Missouri Bar



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Nearly all of them were southern by breeding and tradition. Their life was simple, ample, and leisurely. There were but slight social and economic distinctions among them. The population was small, and intermarriage soon knit them into one large, slowly expanding group. It was a social unit typical of the western frontier, and in it the new democracy in the still new America existed in perhaps as full and true a form as it could then have been found anywhere within the states that comprised our union.

Carroll County, in the days of my childhood, showed the effect of social and economic evolution. The original settlers, now closely inter-related, had moved into commanding positions. They owned store buildings, blocks of dwelling houses, and thousands of acres of farm and timberland. Some of them were bankers and merchants. Others collected their rents, speculated on the stock market, bought and sold real estate, or simply managed their extensive properties. They lived in stately, richly furnished houses; they wore broadcloth suits; they traveled extensively; they educated their children in the East, and lived exceedingly well. Hundreds of German and Irish immigrants, together with native improvidents, tilled their land, felled their timber, rented their store buildings and their houses.

But boy life, which does not see the artificial barriers of wealth and caste, went its rollicking, merry, aimless course, then as now, and always. Sons of the tenants and squatters from shacks on the fringe of the town, and the sons of the landlords who lived in white mansions, swam together in Wakenda Creek in spring and summer, and skated on it in winter. As we grew older,

and more bold, we sometimes ventured as far as the Missouri River, which was ten miles away. When only about eleven years of age, I swam across this swift, muddy, formidable stream—and no subsequent achievement in all of my long life has given me equal satisfaction.

During this period of my boyhood, I spent many weekends during school, and in summer many weeks on the farm of my Uncle John Withers who lived some five miles north of town. His big two-story house of logs sat on the crest of a high ridge at the very edge of a great forest which stretched away behind it to the north and east. He had three sons and three daughters about my age, with whom I played. Half a mile south lived my cousin John Williamson who had two daughters and three sons, of whom we saw a great deal.

At harvest time I often rode the "lead horse" to the binder and tried my hand at shocking up the big bundles of wheat and oats. In the fall, we gathered nuts in the great woods and hunted squirrels, rabbits, coons and possums.

I can yet recall how huge, mysterious, and forbidding that woods seemed to me; how the wind roared through the huge branches of its towering trees on nights of storm; how autumn made of it a place of beauty and of wonder. I can hear again the rustle of dry leaves as I walked or ran along the forest paths. I can see the soft blue sky above, and smell the scent of earth and wood and cooling air. I can see again the giant form of my uncle as he strode along, his long rifle across his arm, his hounds at his heels. I recall the heaped-up table at mealtimes, and how good it was to a hungry boy. I re-

member the fun, the noise, the merriment on that old farm, and see again all of the happy faces now gone quite away.

And so in play, in work, at school, at home, my childhood days quickly passed away until I left childhood forever behind me.

While yet quite young I determined to become a lawyer. None of my ancestors, to my knowledge, had been of this profession, but for thirty years my father was High Constable in Carrollton Township, and with him I often attended Justice and Circuit Court sessions. The drama of the court room completely fascinated me. There, one saw the mighty struggle of minds strong and keen; the emergence of personalities, mysterious, exciting, ignoble, fine; there was the presence and the decision of such vital issues as life and death; of honor and ignominity; of freedom and imprisonment; of fortune and poverty; and always there were words flying, like swift-winged birds, beautiful, majestic, thrilling, wholly lovely words.

At the age of sixteen I read my first law book, and the following summer I spent in a law office. From that time forward all other interests faded into the background of my consciousness and I became obsessed with the study which has so fully occupied my life.

At this time the most usual way for a young man to become a lawyer was to enter an apprenticeship to an established firm. This was not always easy, as lawyers did not care to waste their time on a student unless his mental powers, character, and general attitude indicated that he would be helpful to the firm and would successfully qualify for the practice. I was fortunate in

being invited to enter the office of Busby & Kneisley, which I did in October 1896. My primary duties were janitorial. I opened the office door at 7:00 o'clock—which seemed to me to come very early on a winter morning in north Missouri. I cleaned out the stove, built a fire, swept, burned the accumulated wastepaper, dusted, replaced books which had been removed from their shelves the day before, and in general, "tidied up" the place and readied it for action which, in those quiet times, often tarried long in coming.

With the physical properties in order I retired to my corner, took up some legal work, and immersed myself in the obscurities of contracts, pleadings, torts, equity, real property, or criminal law. The works of the great English jurist, Blackstone, were my first study. Following this came the Commentaries upon Blackstone by Chancellor Kent, Chitty's Common Law Pleadings, The Statutes of Missouri, and books treating other numerous special branches of the law.

Somewhere between eight and nine o'clock the members of the firm came in. Frequently there were documents for me to copy and perhaps to file with the Clerk of the Court. Often I had to deliver papers or books to other lawyers. I sometimes spent many hours in the Court House, making copies of deeds and wills and judgments. Whenever court was in session I was there —to see, to hear, to learn. And many were the strange things that I saw there, and many were the curious things that I heard.

Very often our office would be crowded with clients day after day—the old and the young, the hopeful and the despairing, the angry and the calm, those who were

attractive and strong, and their utter opposites. There a panorama of our people in all of their moods and passions passed before me.

But there were other days of nearly unbroken calm when I heard only the sound of the fire in the stove, of the singing wind on the roof, the murmur of people passing in the square below, and the musical ring of horses' hoofs on the stones of the street. Then it was that my spirit went quite away and back to the Inns of Court in England, along narrow streets, dim with London fog, to lofty, vast buildings where judges, begowned and bewigged, in voices sonorous and final, uttered to waiting, silent multitudes the word of the law. Those splendid reveries were often broken by a mild directive to repair the fire or go for the mail.

As I finished each of the volumes placed before me I was orally examined as to its contents by a member of the firm, after which I often felt it desirable to go back and review certain chapters before going on to another book or subject.

In order to acquire a thorough knowledge of county government the law student was required to work for varying periods of time in most of the county offices. He thus learned how important documents were recorded and preserved; how property assessments were made; how the taxation process was carried through; how lawsuits were handled from the time of filing until after judgment and execution; and how, through its court, a county, with all of its many ramifications, was governed.

In these several ways—by study, by observation, by practice—the youth moved slowly toward his goal.

When his legal tutors deemed him sufficiently prepared, they joined with him in a petition to the Circuit Court, asking for his admission to the Bar.

As the time for my examination drew nearer the gaps in my legal knowledge visibly widened despite my desperate efforts to close them. On the evening of the day set, I and four other apprentices entered the Circuit Court room and took seats in the jury box. All the members of the local bar were present, several lawyers from near-by towns, a large group of friends and relatives of the candidates for admission, and a large number of interested spectators. Circuit Judge W. W. Rucker presided, but the examination was conducted under the direction of Ralph F. Lozier, a brilliant attorney, and later a distinguished member of Congress for many years. He was actively assisted by James L. Minnis, who later was General Counsel and Vice-President of the Wabash Railroad, and by Samuel W. Moore, Kansas City, of the firm of Lathrop, Morrow, Fox, and Moore.

The questioning began at 7:00 o'clock and lasted until 11:00. We were given a thorough, searching, verbal examination covering various phases of the subjects we had studied. Never before or since have I had such exacting demands made upon my mental powers and knowledge. At the end of this time, after a brief conference between the chief examiners, four of us were informed that we were, in the opinion of the committee, sufficiently qualified to enter upon the practice of law. On the following day our licenses, signed by the Circuit Judge and the Circuit Clerk, were issued, authorizing us to practice in all of the courts of the

State of Missouri. We felt that in our hands there had been placed a key with which we could, and would, unlock all the golden treasures of the world. How fortunate is youth, whose boundless hope and courage transmutes even the base metals of this earth into rare and fine ones!

In the pages which follow, I shall reveal how at least one of these four young lawyers, in the long years which followed, had frequently to draw upon that confidence of which he had so great a store on the night when he walked out of the court house in Carrollton, a lawyer at last!

II

THE BAR OF CARROLL COUNTY AT THE END OF THE CENTURY

My license to practice law was issued in June, 1898. Almost at once my attitude toward myself and my associates underwent a subtle but very real change. I no longer was a mere student and learner, but one who had entered the arena of action and combat. My fellow lawyers were no longer mentors and teachers to be blindly followed, but antagonists to be watched, measured, and, in my contests with them, defeated if possible.

At this time, the Dean of the Bar in Carroll County was Colonel John B. Hale, who had been a Union officer in the war between the states, and for a time, Provost Marshal in the town of Carrollton. He was a very large man, kindly of face, pleasant and sweet in demeanor. He was a remarkable man who had a long and interesting career. In 1884 he was elected to Congress and so engrossed in the work did he become that he did not return to his district to campaign for renomination in 1886, mistakenly, as it later appeared, believing that his friends would secure his nomination. When they failed to do so and he was defeated for renomination, he became very much embittered, returned home, ran as an Independent and was defeated in the

general election. He then left the Democratic party and became a Republican. Subsequently the Republican party on several occasions offered him the nomination for Governor, which he always refused.

Colonel Hale was a very great orator with one of the most unusual voices which I have ever heard. He made many outdoor speeches and could seemingly throw his voice to almost any point and it would be heard with perfect clarity. In his legal career he defended over one hundred murder cases and lost but two of them, one of which was his defense of George and Bill Taylor.

Colonel Hale's law partner was Captain W. M. Eads, who had been an officer in the Confederate Army. He was, physically and temperamentally, a good deal like his partner Colonel Hale. He too was a large man, kindly and genial. He too was a fine orator and had an excellent legal mind. I had a good deal of association with him and came to have a great affection for him. Both he and Colonel Hale had heavy mustaches and both filled the popular conception of lawyers and statesmen.

Shortly before this time, Colonel L. H. Waters, a great lawyer and wit, had gone to practice in Kansas City. He had been a close friend of Abraham Lincoln while in the Illinois country and was a singularly genial, attractive man, as was State Senator J. W. Sebree, who was an elderly man at the time of which I write.

The younger members of the Bar were unusually able and all of them attained success. Virgil Conkling, one of the most brilliant of them, later moved to Kansas City and became Prosecuting Attorney of Jackson County. He prosecuted Dr. B. C. Hyde in the famous

Swope murder case, and died while yet a young man. Another was James L. Minnis, who had a splendid legal mind. He later went to St. Louis where he became General Counsel and Vice-President of the Wabash Railroad Company.

One of the most successful law firms at this, or at any other time, in Carroll County, was Lozier and Morris. Ralph Lozier was very handsome, had a fine personality, was a winning speaker, and a splendid trial lawyer. John Morris was retiring and reserved, but a fine legal student and untiring in research. Lozier attracted clients, Morris prepared the cases for trial, and Lozier tried them with spectacular success. This firm endured for many years. After its dissolution by the death of Morris, Lozier was elected to and spent many years in the Congress of the United States.

At this time Morton Jourdan, who later became both wealthy and famous, practicing law in St. Louis, had just gone to Jefferson City to be an assistant in the office of Attorney General R. F. Walker.

A very fine young firm at this period was composed of William G. Busby and Russell Kneisly. While in his early 20's, Busby was elected Mayor of Carrollton. Later on, he was State Senator, and attorney for the State Public Service Commission. Kneisly served several terms in the State Legislature.

C. R. Patterson, another of the older men, specialized in probate and general office work.

James F. Graham, a son-in-law of Captain Eads, was a sound lawyer, a vivacious character, and a speaker whose wit and drollery enlivened many a dull session of court.

There were several other members of the Carroll County Bar at this time with whom I did not become well acquainted, but I was in all of the offices occasionally, and all of the lawyers were uniformly kind and helpful. They examined me in my studies, and made suggestions regarding them. They sometimes discussed pending cases with me and talked, often very amusingly, about suits which they had handled in the past. Their whole lives had been spent in dealing with humanity in all of its many moods and phases. They well knew the strengths and the weaknesses of people, and they had acquired a tolerance and a kindliness for the sinful and the erring that impressed me very much. They showed an innate, natural courtesy and consideration in their dealings with clients and with each other. Life had inclined them to compromise, to accept people as people were, and not to be eternally trying to change them into what they should be.

This attitude was also reflected by judges, as the following incident indicates. An adultery case was being tried in the Carroll County Circuit Court. The lawyers involved were using the words "adultery," which is illicit intercourse between male and female, one or both of whom are married but not to each other, and "fornication," which is illicit intercourse between male and female, neither of whom is married, as though these words had the same meaning. This seemed to confuse one juror very much. Finally he said to the judge, "These lawyers are confusing me. One of them talks about adultery and the other about fornication. I don't know the difference." The judge hesitated for a moment, smiled genially and said, "Neither do I. The

Court has tried them both and has never seen any difference."

These lawyers had a strong fraternal feeling and loved to gather in the evening at one or the other of their offices, smoke, chew tobacco, tell yarns and exchange experiences. At these informal meetings, I heard many stories which I have remembered all of my life. On one of these occasions, Colonel Hale told me a story of my mother, Mary Withers, then about 19 years of age, and her friend Ophelia Walling, both of whom were ardent southerners. It was during the Federal occupation of Carrollton, and a large Union flag had been stretched across the sidewalk on the north side of the square. These girls, rather than walk under the flag, went out into the mud of the street and passed around it. They were promptly arrested and taken before Colonel Hale. When told of their misdeed, he looked from their flushed, indignant faces down to their small, clenched hands and their small, muddy boots. Then he waved the soldiers aside and said gently, "These fine girls believe in their cause, gentlemen, and we must respect their belief. They will harm no one. See that no one harms them. Let them go in peace and be henceforth undisturbed by any soldier of these United States."

Again Colonel Hale told of the visit to Carroll County in 1850 of United States Senator Thomas Hart Benton, who delivered an address at the old Fairgrounds. People came from miles around in covered wagons, with their families and a stock of provisions. Benton began speaking at one o'clock in the afternoon and continued until dusk. When he had concluded, an enthusiastic ad-

mirer leaped to the platform and offered the following resolution: "Be it resolved that Thomas Hart Benton is the greatest living American. Be it further resolved that Thomas Hart Benton is the greatest American who will ever live." These resolutions were immediately and unanimously adopted by the enthusiastic audience, after which Benton walked to the speaker's stand and said, "Gentlemen, from the bottom of my heart, I thank you. You have but done me simple justice."

Benton was greatly admired in Carroll County. He was regarded as being the greatest intellectual and moral force in the United States Senate from 1820 to 1850, commanding far greater respect than either of his talented contemporaries, Webster or Clay, but even his greatest admirers conceded that this egotism was colossal. While he was writing the book, "Thirty Years' View," his publisher asked him about how many copies, in his opinion, they should prepare. Benton replied, "Ascertain from the census how many people in the United States can read."

On another occasion, he was to reply to a speech previously made by the great South Carolinian, John C. Calhoun. When he heard that Senator Calhoun had suddenly been prostrated, he announced that, "Benton will not speak today, for when God Almighty lays his hand upon a man, Benton takes his off."

Probably no Missourian has ever had a life of as much excitement and glamour as Benton's. His daughter, Jessie, became the wife of John C. Fremont, who, under the sponsorship of Benton, became known as the "pathfinder" because of his extensive explorations into the western wilderness. Benton, more than any man of his

time, foresaw that the future of the United States depended upon the acquisition of this western country. He foretold that with it we would become the greatest power that the world had ever seen, and that without it we would have in close proximity powerful enemies which would keep us reduced to a third-rate power. The tremendous political career of Benton cannot be entered upon by me here and it is scarcely necessary because it is one of the sagas of America. For more than thirty years he dominated the politics of his state and very largely of this country. He was finally driven from public life and his unequalled influence broken by Senator James S. Green of Canton, Missouri. Green was for slavery and Benton was against it. Green followed Benton from place to place throughout the state speaking in opposition to him. James G. Blaine, in writing of his twenty years in Congress of the United States, says of Green:

"James Stephen Green, who was so prominent in this legislation, who prepared and reported the bills, and who was followed by a unanimous Senate, terminated his public service on the day Mr. Lincoln was inaugurated. He was then but forty-four years of age, and had served only four years in the Senate. He died soon after. No man among his contemporaries had made so profound an impression in so short a time. He was a very strong debater. He had peers, but no master, in the Senate. . . . Green had done more than any other man in Missouri to break down the power of Thomas Hart Benton as a leader of the Democracy. His arraign-

ment of Benton before the people of Missouri in 1849, when he was but thirty-two years of age, was one of the most aggressive and successful warfares in our political annals. His premature death was a loss to the country. He was endowed with rare powers which, rightly directed, would have led him to eminence in the public service."

When my mind travels back to those early days of my career, I seem to hear again the jovial laughter and feel the hearty handclasp of men now scattered widely about the world, or gone from it to other, distant shores. They were good men and good lawyers. They were my first, true friends.

During my days in Carroll County many men were brought before the bar of justice to answer for their wrongdoings. Most of them were commonplace men who had committed commonplace offenses, but in 1895 there came before our Circuit Court, on change of venue from Sullivan County, the most famous criminal case that had yet appeared in Missouri courts. This was the trial in which William and George Taylor, brothers, were charged with murdering the Meeks' family who lived on the Linn-Sullivan county line. The testimony revealed a stark and unfeeling brutality which was almost incredible. William Taylor was a lawyer, and cashier of the Peoples' Exchange Bank at Browning, Missouri, in the southern part of Sullivan County. He had served one term in the State Legislature. His reputation for integrity and intelligence was high. His brother, George, lived on a farm four miles southeast of Browning and was also well thought of. However, in

1894, William Taylor and Gus Meeks were jointly indicted for stealing cattle. Meeks pled guilty and was sentenced to the State Penitentiary. The case against Taylor was continued, and a short time thereafter he was indicted for the crime of arson. Meeks received a pardon from the Penitentiary in order that he might testify against William Taylor, and he returned to his home in Sullivan County, about fourteen miles north of Browning.

The Taylor brothers expressed themselves many times as being sure that Gus Meeks would never testify against William P. Taylor; that they would kill him first, or cause him to leave the country. Shortly after Meeks arrived at his mother's home, the Taylor brothers commenced to visit him, and tried to induce him to leave the country so that he could not testify. He finally agreed to leave for one thousand dollars and a team and wagon; the Taylors told him they would come and get him and turn the money and the wagon over to him.

On May 10, 1894, George Taylor harnessed his team, hitched them to a wagon and drove to the town of Browning. He went to the Bank where his brother, William P. Taylor, was, and then drove down to his house, unhitched the team, fed them, and had supper. After supper the team was again hitched to the wagon and William P. Taylor was seen carrying some bed quilts out to the wagon. George Taylor then drove away in the direction where the Meeks lived and was seen by several people on his way there. William P. Taylor apparently joined him, and was also seen later.

The mother of Gus Meeks testified that the family

consisted of Gus Meeks, his wife, and three girls, the oldest ten years; that George and William P. Taylor appeared with the wagon and helped Gus Meeks carry their belongings to the wagon, and the family was placed therein. She testified that she kissed her son goodbye, and begged him not to go, because it looked like a trap. They disappeared and were never seen alive again. The next morning, Nellie Meeks, the oldest daughter, wandered up to the house of a neighbor adjoining the George Taylor farm, with blood and straw matted in her hair, and her face and clothing bloody. She informed the neighbor that her father and mother and her sisters, the youngest eighteen months old, were down in a straw stack on the George Taylor farm. The neighbor sent her nephew, Jimmy, to investigate the straw stack, and he saw George Taylor harrowing southeast of the straw stack, although it was so muddy that the mud stuck to the harrow.

He told George Taylor what Nellie Meeks had said, and George Taylor took the boy with him to his house, saddled his horse and rode to Browning. He went immediately to his brother's bank, and after a hurried conversation, his brother likewise saddled a horse and they rode away and were not seen for more than a year, at which time they were captured in Arkansas.

The neighbors went to the straw stack and found that Gus Meeks, his wife and two children were dead. They had been thrown into a small hole and covered with straw. The murder had occurred on Jenkins Hill, about a mile north of the straw stack, where a revolver belonging to Gus Meeks was found.

The Taylor brothers were captured in Arkansas by

Jerry South, a practicing lawyer, who was later Assistant Chief Clerk of the National House of Representatives for many years, when Champ Clark was Speaker. His brother was Dr. John Glover South of Frankfort, Kentucky, who married a daughter of U. S. Senator and Governor William O. Bradley, of Kentucky.

At the first trial at Carrollton, on change of venue, the jury hung, and on the second trial the two Taylors were sentenced to death by hanging. The case was appealed to the Supreme Court of Missouri, and the judgment affirmed, and the sentence ordered carried out.

Before the second Taylor trial at Carrollton, the Taylor brothers and all of their lawyers met in the jail. One witness, not too important, could not be found. Virgil Conkling, one of the Taylor's lawyers, insisted that they try to get a continuance for three months on account of the absence of this witness. All of the other lawyers opposed this. They said they were as ready as they would ever be. Conkling kept insisting. Finally Colonel Hale, the senior counsel, said, "Virgil, why do you insist on this? You know nothing can be gained by a delay." Conkling replied, "I am simply trying to let my clients live ninety days more. That's all." William P. Taylor said, "Mr. Conkling, is that your only reason?" Conkling said it was. Taylor then said, "We will go to trial next week." They did so, and on the second trial they were convicted and sentenced to death by hanging.

While they were in jail in Carrollton, and about two weeks before they were to be hanged, they both escaped by cutting a hole in the roof of their cell, climbing to the roof of the jail, and letting themselves down in the yard with a rope which had been furnished them—George

went down the rope first, and William followed. George escaped and to this day has never been discovered. For many years, at different times, he was reported found throughout the entire southwest, and time after time, men were arrested but were released. No one ever heard of him.

William P. Taylor was captured before he got out of the jail yard and placed back in jail, and was legally hanged. To this day I can see him as he slowly walked to the gallows, with a Catholic priest on one side and a deputy sheriff on the other, and I can see him as he ascended the scaffold, and I can see the black hood placed over his head and I can hear the trap as it was sprung, and I can see his body as it fell.

This was the most stupid murder ever committed. It seemed as if the Taylor brothers wanted the world to know that they had killed the Meeks family. They apparently made no effort to hide their guilt, but seemed proud of it until they were caught. Then they had no possible defense.

III

THE FIRST CITIZEN OF CARROLL COUNTY

Following the war between the States and for many years thereafter, the first citizen of Carroll County was General James Shields. He had come to the United States from County Tyrone, Ireland, when but 17 years of age. He had a superior education and some knowledge of military tactics. He located at Kaskaskia, Illinois, and was admitted to the Bar of the state in 1832. He was elected to the Illinois State Legislature in 1834 and 1836. He served there with Douglas, Lincoln, Browning, Hardin, Baker, and other young giants of politics. In 1839, he was elected State Auditor, and in 1840 moved to Springfield, the new state capital. He was appointed to the Supreme Court of Illinois in 1843, and wrote many able opinions. In 1845, he was appointed, by President Polk, Commissioner of the General Land Office in Washington. In 1846, he was made Brigadier General of the United States Volunteers, and in that capacity had a glorious record in the Mexican war. It was he who planted the American flag on the heights of Chapultepec, and although twice seriously wounded, he led his command into the City of Mexico and raised the Stars and Stripes above the Halls of the Montezumas. A picture of the Chapultepec engagement

is in the corridor of the Capitol in Washington, and General Shields can easily be recognized leading his troops. In this war, he fought side by side with U. S. Grant, George S. Mead, Joseph E. Johnston, Robert E. Lee, James Longstreet, George E. Pickett, and Stonewall Jackson.

In token of his services, the state of Illinois presented him with a sword that cost $3,000.00, and shortly afterward the state of South Carolina presented him with a diamond-hilted sword valued at $5,000.00. After his war service, President Polk appointed him Governor of the territory of Oregon, but in 1849 he was elected for a six-year term to the United States Senate from the state of Illinois. He entered the Senate as a colleague of Stephen A. Douglas and he there became intimately acquainted with Webster, Clay, Calhoun, Benton, Chase, Breckenridge, Jefferson Davis and many others who were to play major parts in the division of the Union which was impending. He was opposed to the extension of slavery, and on numerous occasions warned the South that secession, if attempted, would fail.

By the time his term of office had ended, the Illinois Legislature was Republican and he was defeated for reelection. On the first ballot for Senator, Shields received 41 votes, Abraham Lincoln 46, and Trumbull, 5. Trumbull was eventually elected. Shortly thereafter, Shields moved to the new state of Minnesota, where he was almost immediately elected to the United States Senate from that state, serving until 1859, at which time he moved to the state of California.

When he learned that Fort Sumter had been fired upon, Shields tendered his services to his old rival, Abra-

ham Lincoln, who immediately appointed him Brigadier General and sent him to the Shenandoah Valley in Virginia. There, he met Stonewall Jackson's army at Winchester and defeated it, the only time that Jackson was ever decisively beaten. In subsequent engagements, Shields was wounded and before the end of the war, left the Army as an invalid. He then moved to Carroll County, Missouri, and purchased a farm near the town of Carrollton. He was a candidate for Congress in 1868 and received a decisive majority of the popular vote, but a hostile canvassing board threw out the vote of two counties in the district and certified the election of his Republican opponent. In 1874 and again in 1876, he was elected to the Missouri Legislature from Carroll County. In 1879 he was chosen for the third time and from the third state to be a United States Senator, finishing an unexpired term. He thus had the unique record, unparalleled by any other man in the entire history of the United States, of having been a United States Senator from three states and a General in two wars.

General Shields was chosen by the state of Illinois as its representative in the Hall of Fame in Washington where his statue may be seen today. In 1910, the Congress of the United States authorized the erection of an imposing monument at St. Mary's Cemetery, which is about two miles northeast of the town of Carrollton. In 1913, the state of Missouri erected a monument to him in front of the Courthouse at Carrollton. I was asked to deliver one of the addresses at the dedication of this monument, which I did.

One of the most bizarre happenings in the life of Shields was the duel that he almost fought with Abra-

ham Lincoln. While he was living in Springfield, Illinois, a series of articles appeared in the paper which held Shields up to ridicule. He had a typically fiery Irish disposition and pride and immediately demanded from the editor of the paper to be told the name of the author. Either from the editor or in some other way he found that the articles had been written by Mary Todd. Shields immediately spoke to Lincoln about the matter and demanded an apology. Lincoln chivalrously assumed the authorship and refused to apologize. Shields then challenged Lincoln to a duel and was accepted. On a fine spring morning, therefore, Lincoln and Shields, together with their seconds, crossed the Mississippi River at about the point where Alton, Illinois, is located, over to Missouri. Just as the principals were about to engage, the seconds effected a reconciliation satisfactory to both parties. Shields, together with Stephen Douglas, courted Mary Todd, who turned them both down in favor of Lincoln, whom she believed would go farther along the road of life than either of his rivals. History has conclusively demonstrated that her judgment in this instance was very right.

For a friendless Irish lad who left his homeland and came to strange and unknown shores alone and unbefriended, he climbed high up the ladder of fame, and by his many splendid contributions to her, he established himself securely as one of those whose genius has made America great.

IV

A YOUNG LAWYER

For the first few weeks after I received my license to practice law I was so dazzled by my new station in the world, so pleasantly occupied in receiving the congratulations of my friends, that I thought of but little else. I believed then that the privilege to practice law was the greatest honor that could be conferred upon anyone. Today, after the lapse of many years, that is still my opinion.

After a short time, however, being a full-fledged lawyer ceased to be a novelty. My position in the firm where I was working remained unchanged, and I began to survey the situation in which I found myself. The results were not encouraging. The volume of law business that Carroll County furnished was not unusually great for a County of its size, and that business was cared for by a Bar that was large and brilliant. Many of its members were young men who had not reached their prime. They had good and firmly established clienteles. It was only too clear to me that regardless of how much legal talent I might possess, and however diligently I might apply myself, it would be a long time before I could hope to attain much practice. I, therefore, began to look about for a location which would afford more immediate opportunity. For reasons which I do not now definitely

remember, I fixed upon the town of La Plata, in Macon County, in the northeastern part of the state. At no subsequent time did I have reason to regret that choice.

This County had been named in honor of Senator Nathaniel Macon of North Carolina, about whom a very interesting ancedote is told. Macon had been elected Speaker of the House during the Jefferson administration. After his death, it was decided to hang his picture in the Speakers' gallery in Washington, but as there was no known photograph of him an artist was sent to his home in North Carolina to see if one could be found there. He was not able to do so, as Macon had never had a picture taken. However, the artist talked with people who had known him and learned from these conversations what kind of eyes Macon had, what kind of nose, and other features. These people referred him to others in the community who looked like Macon in those respects, and from all of this information, so variously gathered, the artist painted a composite picture. After it was done one of Macon's former negro slaves looked at it and said, "That's Massa Macon." This picture hangs in the Speakers' gallery at Washington today.

This County had a fine agriculture, was a splendid stock country, and was a large producer of coal. Its people were very similar in their antecedents, customs, and ways of life to those among whom I had been reared. La Plata was in the extreme northern end of the County and was not the County Seat. It was a beautiful little town of about two thousand population, located on the Chicago-Kansas City main line of the Santa Fe Railroad, and on the northern extension of the Wabash from St. Louis to St. Paul. It had three terms of circuit court each

year and several of the county offices were located there. I found office accommodations with a real estate and insurance man who occupied one large upstairs room. He loaned me a battered desk upon which I placed my law library, a two-volume set of the Revised Statutes of Missouri. My rental was one dollar per month and one-half of the fuel bill. Under these circumstances I faced the future with absolute confidence. I was a young man with a young man's limitless hope and courage; I was in new country with the open range only a few miles to the west; I stood at the beginning of a great, new century of unbounded opportunities. I would not have changed places with any man in the United States.

My first days in La Plata were spent in becoming acquainted with the townspeople. One of the first of these that I met was the newspaper editor, James L. Baity. This was the beginning of one of the finest and most enduring friendships of my life. He was brilliant, scholarly, aggressive, and energetic. In the years that followed, he rose steadily in his profession and in politics. Today, he is Assistant Comptroller General of the United States, and the quiet, unobtrusive, trusted counselor of Presidents and cabinet members. Then, like myself, he had little but ambition and youth.

Having been reared in the Christian or Disciples Church, I accordingly went to services there my first Sunday in La Plata, with the intention of placing my membership. I found the congregation involved in a heated argument as to whether the church should have an organ. Part of the membership were in favor of the plan, but others thought that it would be sacrilegious. Envisioning a division in the church and perhaps in the

town over what seemed to me to be a trivial issue, and thinking it extremely unwise to begin my career by being involved in such an embroilment, I quietly withdrew and affiliated myself with a congregation which was less contentious.

Continuing my campaign to know and become friendly with everyone in town, I met and became well acquainted with the police judge, justice of the peace, and the three resident lawyers, all of whom were intelligent and congenial. Squire Bunch, the judge, particularly impressed me and continued to do so in the years that followed. He was an ex-Confederate soldier, very meagerly educated, but dignified, a splendid judge of character, wholly impartial, and with a fine sense of justice.

Circuit Court was held in the Opera House, whose silence was otherwise very seldom disturbed. Court was presided over by Judge Andrew Ellison of Kirksville, one of whose brothers was at this time Circuit Judge in the Maryville District, while another was a member of the Kansas City Court of Appeals. His nephew, George Robb Ellison, is now a member of the Supreme Court of Missouri.

I only saw Judge Ellison preside over the November term in 1898, as he was succeeded the following January by Judge Nat. M. Shelton, of Schuyler County, but I am quite sure that he deserved his reputation as a great jurist.

My first client and my first court appearance came about three weeks after my arrival. One John Farmer was arrested for keeping a vicious dog. He had no money and no lawyer, which was a bad situation for him. I

was appointed to defend him and was given a fee of five dollars to do so. This money, paid before the trial began, was contributed by four townspeople and the Judge, each of whom gave one dollar. A jury was not requested by the prosecution, and since I had become quite friendly with the Judge, I did not wish to affront him or to cast any reflection upon his integrity by calling for one either. The trial began and it quickly became clear that the evidence against my client was simple, direct, and damning. My chief defense was a spirited rendition of Senator George Vest's eulogy on the dog. At its conclusion, Judge Bunch heartily congratulated me upon it and said that Vest himself could not have done it as well. He added that it, of course, had nothing to do with the case at hand, promptly found my client guilty as charged, and sentenced him to serve thirty days in the calaboose. I came away with five dollars—the first money I ever earned as a lawyer—jangling pleasantly in my ears, and a certain amount of confusion in my mind as to whether or not, in this my first case, I had failed or succeeded. My client, who served all of his thirty days' sentence, had no doubts, however, about this part of the matter.

I have indicated before that the citizens of La Plata, with few exceptions, were a singularly fine, peaceful, orderly group of people. The tough element, found in almost all towns, large and small, was there almost wholly absent. The town had never had a saloon and public drinking was unheard of. However, soon after my coming rumors began to circulate that in one of the local drugstores the liquor law was being violated. The story was that men who were well known to the manager

could go behind the prescription counter, help themselves to a bottle of Bourbon, leave ten cents on the counter and walk out. In the course of time, the proprietor was formally charged with a violation. The other three lawyers in town were promptly engaged for the prosecution. Whether because I was the only local lawyer left, or, as I preferred to believe, because he had confidence in my ability, the defendant engaged me to represent him. And certain it is that no client ever had a lawyer who entered upon his defense with more zeal and enthusiasm. I read every case in the Missouri Reports that related to the prosecution of druggists and to the violation of liquor laws. After doing so, I concluded that my defense would be a general denial of guilt.

On trial day, almost everybody in the community was present, and the little Opera House was packed. The case was called and I requested a jury. Out of the several hundred who were present, the Marshal selected twelve men for the panel. Of this number, I struck off three whom I thought would be unfriendly to my client. The City Attorney then cancelled out the names of three others, leaving a jury of six. In presenting its case the prosecution called witness after witness who testified that he had bought and paid for whiskey by the drink from the defendant in the manner which I described above. I subjected each of them to a thorough cross-examination, asking what experience they had had with intoxicating liquor, whether they knew the percentage of alcohol in the liquor bought from the druggist, and whether the liquor which they bought might not have been a soft drink, with somewhat the taste and appear-

ance of whiskey. However, each witness stoutly maintained that what he had bought looked like, tasted like, acted like, and was whiskey. One of these witnesses generously volunteered the information that it was unusually good whiskey, too. For some reason, although I cannot now imagine what it could possibly have been except my boundless, unquenchable optimism, I conceived the idea that I had created a great doubt in the mind of the jury regarding the guilt of my client. I, therefore, rested my case without putting my client on the witness stand, although he expressed an almost violent desire to testify.

In his argument to the jury, the City Attorney made a brief, cogent, succinct talk in which he effectively summed up the completeness of the case for the State, and pointed out the total failure of the defense. When my turn to speak came, I arose, aflame with ardor. I ranted about the Declaration of Independence, of the Constitution, of the American flag, of the sacred rights of individuals in a land dedicated to individualism. I charged—with great lack of originality—that my client was being persecuted instead of prosecuted. I felt that I was carrying the jury with me beyond all doubt, and when toward the close of my mighty effort one of the jurymen winked at me, I felt as perfectly confident of an acquittal as though it had already been given. The City Attorney, in what seemed to me to be a rather colorless summation, concluded the argument and the jury retired to a back room to find its verdict.

During the trial, I had several times noticed a rather distinguished-looking man sitting out in the audience and had observed several people go up and speak to him.

I now walked down the aisle and introduced myself. He stated that he was M. D. Campbell, an Attorney at Kirksville, who had been asked by the defendant to assist me in the case. He said that he had concluded to watch the proceedings instead, and to assist me in an appeal of the case. With all of the brashness born of youth and inexperience, I promptly replied there would be no appeal because the jury was certain to acquit. Mr. Campbell courteously replied that, in his opinion, the jury would find the defendant guilty and was now trying to agree upon the size of the fine to be assessed against him. The hot reply which trembled upon my lips was not given, only because at this moment the jury came in. They found the defendant guilty as charged and assessed his punishment at a fine of twenty-five hundred dollars!

Never before had I plumbed the depths of humiliation and despair into which I was at that moment plunged. I saw myself a complete failure as a lawyer. I saw my legal career, of which I had hoped so much, in ruins with nothing left me but to creep back to Carrollton and spend a miserable existence clerking in a grocery store or working on a farm. My recent confidence in an acquittal, wholly groundless as I now saw with terrible clarity, seemed the hallucination of an idiot. My refusal to let my client testify appeared the act of a maniac and my almost insulting attitude toward Mr. Campbell now appeared perfectly incredible. The thorough disgust of my client was the capstone to my almost unbearable discomfiture. The only ray of light in this otherwise Stygian blackness came from my wise and kindly co-counsel who assured me that my effort had been fine, that nothing was easier for a lawyer participat-

ing in a case than to misjudge the effect of the evidence on the jury, that we would perfect an appeal and that he confidently expected the Circuit Court to reverse this verdict.

At this time, La Plata had a city ordinance which stated that all complaints must be filed in the name of the City Attorney. In this case of the druggist, the City Attorney being out of town at the time, his law partner filed the complaint as Acting City Attorney. Mr. Campbell filed a motion to quash this particular complaint on the ground that it had been filed by an officer unknown to the law as there was no such officer as Acting City Attorney. The Circuit Judge sustained this motion and discharged the defendant.

Because of the successful termination of this case, although without any contribution on my part, by good spirits and self-confidence immediately, albeit illogically, returned in as great a degree as if I had accomplished this victory all by myself!

I subsequently tried many cases with and against Mr. Campbell and each time experienced a heightening of respect for his character and his legal ability. He later became a commissioner of the Kansas City Court of Appeals and was highly regarded as a jurist.

From this trial, I learned a great deal. I was destined to make many mistakes in the trial of cases in the years to come, but I never again fell into the same foolish errors that I had in this, my first real case. That my failure was not at the expense of my client, the druggist, has always been a great source of thankfulness to me and the source of a great feeling of gratitude to Mr. Campbell, who alone was responsible for this debacle becoming a victory.

V

MACON COUNTY PERSONALITIES

I apprehend that as this narrative proceeds its tendency will be to increasingly confine itself to law and politics, because these were the two themes which more and more absorbed my time and attention. I shall endeavor to avoid this as much as possible because to do so would be to exclude from this account much that has given color, variety, and interest to my life.

In Macon County, at the time of my residence, there were numerous unique personalities. Perhaps the foremost, in his interest for me, was Colonel Frederick W. Blees. He appeared in Macon in the early 90's as an instructor in the St. James Military Academy, a small school which was located in that place. At this time, he had a wife and two children and since the school was not prospering, he had considerable difficulty in making a living for his family. A few of the townspeople assisted him in various ways and he managed to get along in a very poor fashion. However, after he had been in our town for something over three years, his father, who lived in Metz, Germany, died, leaving him around one and one-half million dollars. As is usual on such occasions, a host of friends immediately surrounded him. The Colonel had a long and accurate memory, however,

and refused to fraternize with those people who had been cold toward him in the days of his adversity. This included several local merchants who had denied him credit in his time of need, but who now were perfectly willing to share in his prosperity. One of the persons toward whom his generosity was most largely extended was Dr. E. B. Clements, who had given his family medical care without pay, at a time when no other doctor in town would care for them. Blees now retained Clements as his family physician at a large annual salary. Clements later became a very wealthy man, was active in Republican politics, becoming Republican State Chairman and National Committeeman from Missouri.

Colonel Blees, after coming into his father's inheritance, built a three-story office building in Macon, and a carriage factory. In the operation of this factory, he employed several hundred persons, adding very greatly to the prosperity of the town. A few years later, his mother died and he inherited an additional two million dollars. He then erected the Blees Military Academy south of Macon, in which many wealthy boys from the East were educated. It was and is one of the finest structures of its kind in Missouri, its erection costing nearly one million dollars even in those days of cheap labor, long working hours, and low material cost. This Academy had a professional football team, playing and defeating some of the best teams in the country. This school had some fine saddle horses and Colonel Blees was the owner, for a time, of the world's Champion Rex McDonald. Blees died suddenly in St. Louis, during the World's Fair of 1904, but the school survived until 1910. At that time, the property was purchased by an Osteopathic Associa-

tion and is now operated as the Still-Hildreth Sanitarium for the treatment of mental diseases. Colonel Blees was a typical Prussian. His father was a munitions manufacturer in Germany. Blees was in many respects a very fine man and certainly was a constructive factor in the community. He did not possess the faculty of successfully managing money and his family finally lost almost all of its property.

The best known citizen, nationally, that Macon County has ever had was Theodore Gary, who became a great figure in the financial and industrial life of this country. He started his business career as a house mover. When new towns were being located on railroads, he did a big business. At one time, he walked over practically all of Macon County, trying to sell lightning rods to farmers for the protection of their houses and barns. He was not very successful at this because our farmers thought that this would be an attempt to defy nature and that it would certainly bring the wrath of God down upon them. They were definitely averse to being struck by lightning, but they preferred to take their chances on that rather than to bring down upon themselves the wrath of God which was certain to follow any attempt on their part to circumvent nature.

After the failure of the lightning rod project, Gary bought land in Indiana and laid it out in town lots in the belief that a new railroad was coming that way and would locate its shops there. Instead, the railroad went twenty miles away and the town lots again became cornfields. Later, he opened a real estate office in Macon and did very well. About the beginning of the century, by pure accident, he became interested in the telephone

business. It was in its infancy and he bought the Macon plant, on credit, for $2,500.00. This was the beginning of his rise to fame and fortune. He subsequently bought the plants in St. Joseph, Joplin, and Kansas City, as well as hundreds of others throughout the United States. He bought these by simply issuing stock to pay for them and selling the stock. In those days, there was no limit upon the amount of stock which a corporation could issue, as long as the directors were agreeable. Gary later moved to Kansas City and built a large apartment, where he lives in a penthouse far above the street, surrounded by trees, shrubs and flowers. He also built a mansion at the edge of Macon and constructed a large lake which he gave to the town for recreation purposes. His estate there consists of many acres, beautifully landscaped, and is today one of the beauty spots of northeast Missouri. He also gave a very fine hospital to the city of Macon.

Gary purchased the patent for all automatic telephones, and every time a receiver is taken off the hook in America, England, France, and indeed anywhere in the world, he receives a royalty. He amassed an enormous fortune consisting of many million dollars and he is recognized as one of the financial leaders of the United States. He became Chairman of the Missouri Highway Commission and is one of several persons responsible for the splendid concrete highway system in Missouri. He has been given degrees by Missouri University and by numerous other educational institutions. His $2,500.00 investment forty years ago is today worth many millions of dollars.

The first millionaire that I ever saw was Thomas Wardell, who lived in Macon. He inherited the great Bevier

coal mines six miles from Macon, after his father was shot and killed in 1888, while trying to settle a strike in the mines. It was from Wardell that I bought my first automobile, a Winton.

During the years of my residence in this pleasant place my life touched the lives of many men and women who have secured a permanent place in my interests and affections. They were of diverse types and characters but all of them possessed, in varying degrees, unique qualities of human personality which gave to them an interest for me which has been enduring.

In the political campaign held in the fall of 1898, I made several speeches for my party in the northern part of Macon County. This extended my acquaintance and gave me needed experience. After the election, the new Circuit Clerk told me that the County owned a law library which I might take to my office between court sessions if I would return it to the courtroom while court was being held. I at once had shelves built in my office and acted upon this kind offer. The library consisted of the Missouri Supreme and Appellate Court Reports, and with it I was as well equipped to practice as the average country lawyer. I spent most of my spare time reading these reports and eventually got through most all of them.

The Prosecuting Attorney elected that fall was Ben Franklin, who claimed relationship with the famous statesman and philosopher of Philadelphia. He was paid a small salary and was given fees for all convictions which he secured, these being twenty-five dollars in Circuit, and five dollars in Justice Court. His office was in Macon, the county seat, and since there was no way to

get around except by buggy or horseback, he appointed me as his assistant to prosecute all justice court cases in the ten northern townships of the County, my remuneration to be the fees which I collected.

My first case as assistant, was in the village of Elmer, located on the Santa Fe. The charge was of cutting timber on land belonging to another person. I subpenaed my witnesses, and on trial day arrived in good time on a local freight train, keyed for the battle, only to find that the defendant had taken a change of venue, that the Judge had sent the case to another township far off the railroad and about fifteen miles from La Plata, to be tried two weeks later.

On that day I hired a horse and by starting long before daylight, arrived at the house of this Justice early in the morning with my army of witnesses trailing after me. The Justice stated that the papers in the case had not yet reached him and that it would, therefore, be impossible to proceed at that time. He kindly promised to notify me when everything was in order. Very much disgruntled, I returned to La Plata; a few days afterward I received a letter informing me that the case had been set for trial. Again I subpenaed my witnesses and again I traveled to the home of the Justice, this time to find that the defendant had asked for a continuance, because of a missing witness. Over my violent protests and to my infinite disgust, the continuance was granted and once again I rode homeward with my prosecution exactly where it had been in the beginning. My discouragement was profound, and I cursed "the Law's delays" as heartily as anybody ever did!

These dilatory tactics were, of course, part of the strat-

egy of the defendant's lawyer, who was not a lawyer at all. In those days, when no one paid any attention to who practiced law, many laymen practiced in Justice courts. Some of them were dangerous adversaries. They were always well acquainted in their community, where they were perhaps related to the Judge and half the jury, and had loaned money or done other favors to the other half! They usually had a considerable amount of native shrewdness and were wholly without scruple. These circumstances, added to the fact that there were almost no rules of procedure or regulations regarding the admissibility of evidence in Justice courts, often made these men hard to defeat. Many good lawyers very often failed to do so. My opponent on this occasion was just such a character. However, he had by now exhausted all of his resources for delay, and once more I and my disgusted witnesses made our way to the home of the Justice. We found nearly everybody in the township on hand, filling the house to overflowing and many standing in the yard, watching proceedings through the windows. Judge, jury, lawyers, defendant, and Constable were practically sitting in each other's lap. There was constant noise and confusion, caused by people entering and leaving the house; the day was very cold and the place was full of draughts. I feel sure that Court in Missouri was never held under more uncomfortable circumstances. The trial began at ten o'clock and, with thirty minutes' recess at noon, lasted until six in the evening. The jury retired to an outhouse to consider its verdict. Whether because the temperature in this extempore jury room was considerably below freezing, or because my case was clear and convincing, they were back in exactly four

minutes with a verdict for the State and a fine of one dollar against the defendant! This he paid, together with my five-dollar fee and all other costs in the case. I may add that in these cases, the Prosecuting Attorney had one factor very much in his favor; this was that the Justice before whom the case was tried, and the Constable who picked the jury panel, got nothing whatever for their services unless the defendant was convicted! This fee system of paying officers in criminal prosecutions has now, thanks to the new Missouri State Constitution, been abolished, and the ends of pure justice are much better served because of it.

At the next primary election, when I had been in Macon County a little over a year, I was announced as a candidate for Prosecuting Attorney against three other candidates, all from Macon. I hired a horse, which cost me fifty cents a day, and began to canvass the County. I gave a card bearing my name and the office which I sought to everyone I met, regardless of age, color, or sex. Before the campaign was over, I had been in all twenty-four townships, I had met a great many people, and had had some very interesting experiences. I finished second in the race which, under all the circumstances, I considered very good. The man who was nominated was a member of one of the oldest and best known families in the County and was the publisher of the most widely circulated County newspaper. His father was a successful politician and, together, the two of them constituted a formidable combination.

After the election, I immediately wrote the nominee a letter of congratulations and offered my services to help elect him in the fall. He responded in a very cordial

manner and the relations between us, which had been slightly strained during the heat of the campaign, were put upon the most friendly basis. I campaigned all over the County for him and perhaps contributed in some degree to his election.

I continued to prosecute misdemeanors in the northern part of the County and at the end of my first year found that I had taken in a total of $240.00 from my law practice. To me, this seemed like a large income. Since I paid only ten dollars a month for a room and three meals a day at the best hotel in town, and since my office cost me only one dollar a month and my part of the fuel, I was able to live very comfortably. My first year's practice had been highly instructive to me. While my experience had largely dissipated the brashness of which I had so large a stock at the beginning, I had begun to acquire some sort of estimate regarding my abilities, and a confidence in myself to successfully contend with my legal adversaries. The most important thing that I had learned was that there was a vast deal of law that I did not know; that there was a veritable mine of knowledge regarding the handling of lawsuits and the handling of people which I had yet to acquire. I was beginning to dimly sense that with experience, with hard and unremitting application to my profession, I might perhaps attain in some degree the legal heights which, upon the day that I had received my license to practice, seemed so imminent and so accessible. With this thought in mind, I set to work with more determination than ever before to master the infinite number of phases incident to the successful practice of the law.

VI

MARRIAGE, MACON COUNTY LAWYERS AND JUDGES

The next year I was married to Miss Mayme Fisher, a very charming young lady whose family had lived in Macon County for many years. We rented a very attractive and commodious house for the sum of four dollars per month, and were quite extravagantly happy. I now had a feeling of permanence and stability which I had never known before, and which I found highly satisfying.

Soon after my marriage, a friend of mine was elected Mayor of the town. Almost his first official act was to appoint me City Attorney, which carried a salary of ten dollars per month with fees for all convictions. In this capacity, I successfully prosecuted several infractions of the liquor law. One rather notorious violator bought a drugstore and did a thriving business in illegal whiskey sales. So artful was he in this illicit business that I finally concluded that I would never be able to secure sufficient evidence to make a case against him which would be strong enough to convict. Since his activities were widely known, and since the overwhelming sentiment of the town was in favor of a strict enforcement of the liquor law, I was placed in a somewhat embarrassing

position. I finally extricated myself from it by getting the City to employ a special police officer who entered the violator's place of business the moment it opened in the morning, and who remained there until it closed in the evening. The proprietor of the store complained bitterly about these tactics, but had no way to eject the officer. As long as the officer was in the store, prospective whiskey purchasers refused to enter and no sales whatever were made. Because of the unusual situation thus created, prospective purchasers of legitimate articles also stayed away, so that this drugstore did no business whatsoever. In less than a week, the proprietor sold out to a respectable druggist. I received a good deal of credit for this maneuver which was as unusual as it was successful.

It was at about this time that I tried my first lawsuit in Circuit Court. For a number of reasons, it attracted a good deal of attention. At this time, in rural Missouri, the law governing liability for negligence was but little understood by the majority of country lawyers and it was very seldom invoked by persons who sustained losses due to livestock being injured by railroads. In addition to this was the fact that, because of their great power and influence, the majority of people would have hesitated to bring any action against them. This set of circumstances combined to create a situation which afforded me a very fine opportunity to develop my practice and reputation as well as to accumulate a substantial financial reserve. My initial opportunity came when a farmer living south of La Plata came in to consult with me about securing damages for the killing of a jennet belonging to him which had gotten on the tracks of the Wabash Railroad, and had been killed by being struck by an engine.

He shared the general intimidation regarding taking direct action against the road, but he did feel that he deserved restitution. Seeing an opportunity to come to close grips with a group which I had observed to be quite reckless with the rights of others, I strongly advised this man to file suit. Somewhat reluctantly, he consented to do so. I had very little idea as to what a jennet was, other than it bore some relationship to the mule family. I had no intention whatever of letting my client know of my ignorance in this respect, as I feared it might cause him to lose confidence in me. However, when he told me that this particular animal was very valuable, I filed suit for $500.00.

It was the custom of the railroad companies, on those rare occasions when anyone along their lines had the temerity to sue them, to send out trial attorneys from their city offices. In this case, the counsel who appeared for the road was Colonel Grover of St. Louis. He was an ex-Federal officer, learned in the law, and a master of technicalities. I read all of the cases that I could find dealing with the subject and found that the law governing such cases was that if an animal got on to the railroad tracks by passing over a cattle-guard, that the railroad was not liable, but that if the railroad company's fence between the right-of-way and the pasture in which the animal was confined was out of repair and the entry of the animal on to the tracks was made through the railroad fence, that the road was liable. In the trial of the case, I offered numerous witnesses who testified that the railroad fence was broken down and that the jennet had entered the railroad right-of-way through a gap in the fence. For its part, the railroad offered testimony that its

fence at this particular place was in perfect condition and that the animal must, therefore, have entered by crossing the cattle-guard. After a lengthy consideration, the jury brought in a verdict in favor of the plaintiff for $350.00. The railroad did not appeal the case, but after considerable delay, paid the sum awarded by the jury, and the costs. Shortly after this, a story became circulated throughout the County that this jennet was not worth over $50.00. This fact established me in the eyes of the public as a lawyer of the people and a successful attacker of corporations.

This successful suit was the first of numerous damage suits against the Wabash, Santa Fe, and Burlington, which came to me not only from Macon but from adjacent Counties. I had, through no particular foresight of my own, opened a field of litigation which quickly became, for me and for many other lawyers, both extensive and profitable.

I now found my life expanding and deepening to a degree which only a short while before I would not have thought possible. My marriage, and the subsequent birth of a daughter, turned my interest to a greater degree than ever before upon the town and town activities. I joined several lodges and became deeply interested in that work. My interest in church work became much greater. I was asked to teach a Sunday School class at this time and did so for a number of years. I found myself called upon increasingly often to deliver speeches upon various subjects and occasions throughout the County. In brief, my integration with these people and this place was now complete, which, in my opinion, is a rare testimonial of the innate friendliness and kindliness

of the community and their hospitable attitude toward one who had so recently come as a stranger among them.

At the same time, I found my legal work constantly increasing. My justive and police court work continued. My office work, the drawing of wills, deeds, contracts, and examination of abstracts of title, was quite heavy. Within the following two years, I tried Circuit Court cases in some twenty surrounding Counties.

Not the least factor involved in this expanding practice was transportation to these places. The railroad, of course, was the only means of travel to any distant point, as there were no hard roads and automobiles were used only to a very limited extent. This necessitated my being away from home for several days at a time, which was a hardship in some respects, but which also had a pleasant side. Lawyers attending court out of their home County usually all stopped at the same hotel. In the evenings, they would congregate in the hotel office and exchange experiences. Many of the older lawyers had been in the Civil War on either the Federal or Confederate side. Many of these men were of great learning and brilliance, and their conversation was, to me, highly interesting and informative.

As my legal business increased, I naturally came into more frequent contact with members of the Macon County Bar. Many of these lawyers were very able and had had interesting careers. The Dean of the Bar was Major B. R. Dysart, a Confederate soldier who walked with a slight limp, the result of a bullet wound in the hip at the battle of Antietam. He rode with Stonewall Jackson. He had been in the war for four years and had seen a great deal of fighting and bloodshed. He was

quiet and retiring in manner, was a very able lawyer, and had a vast knowledge of practice and procedure. He was a master of technicalities and was often called in by younger lawyers to assist them in the trial of difficult cases. His partner was Robert G. Mitchell, a very aggressive and able trial lawyer. Captain Ben Eli Guthrie had also been a Confederate soldier and was also very capable. He had been in school with Dysart when the Civil War broke out, but, like Dysart, had volunteered and served four years with the Southern army. He rode with "Pap" Price. His partner was Ben Franklin, whom I have mentioned before. These two firms were not exceeded in ability by any in central Missouri, and were highly successful. Here also was Waldo Edwards, an excellent lawyer and an attractive personality, and M. A. Romjue, who for a quarter century represented his district in Congress.

Another member of the group was Colonel C. P. Hess, a Prussian immigrant who spoke with a decided accent. He always said that he "fit mit Sigle." Judge R. S. Matthews had been Probate Judge for many years and had a fine office business. R. W. Barrow, Dan R. Hughes, Lysander Thompson, Otho Matthews, C. G. Buster, John A. White, Nat M. Lacey, W. C. Goodson, W. M. Van Cleve were the younger members of the Bar. Of this group, Hughes was particularly brilliant and was one of the best campaign orators in that part of the state. All of these men lived in Macon.

In La Plata, Joseph Park, who started to practice law shortly after the Civil War, was the leader of the Bar. He was an able trial lawyer and had a good practice. John M. Davis and John W. Overstreet were the other

two lawyers there and were in partnership. They were well educated lawyers who emphasized their office work.

I have mentioned that Judge Nat M. Shelton of Lancaster succeeded Judge Andrew Ellison as Circuit Judge of the District in 1899. I think he was one of Missouri's greatest trial judges. Before coming to the bench, he had served a term in the State Senate and had been very active in civic affairs. He was well grounded in the history of the country and in the fundamentals of the law. From the soles of his feet to the crown of his head, he looked and acted like a Judge. He was courteous and affable, but he was absolute master of his Court, and no one ever thought to question it. He kept up with all of the rulings of Appellate Courts and his knowledge of the law and its applicability was almost uncanny. Seldom have I ever seen a question presented to him which caused him to hesitate for a moment. He ruled quickly and disposed of business rapidly. He was wholly approachable and would talk with any litigant at any place about any case in his court. He appeared to be wholly incapable of prejudice or favoritism. He was exceedingly kind to young lawyers and would frequently protect them against technicalities urged by older, and more experienced members of the Bar. He had an innate sense of justice and a great zeal for it. In my opinion, looking at him from the perspective of many years and a considerable experience, he had sufficient capacity to sit upon any Appellate Court in the United States. Such jurists as Judge Shelton have been the bright and particular glory of American jurisprudence, and have done much to establish in this country a legal system which,

in my opinion, is the finest that has ever been produced by any civilization.

The most picturesque, dramatic happenings in the history of Missouri occurred during the long and bitter period of border warfare. Intimately connected with it, as a precursor and as an aftermath, were political campaigns. These were too often characterized by intemperance, prejudice, violence of feeling and of speech. But from these tempestuous elements not infrequently there came flowers of strange beauty. The campaign of 1892 was productive of such a flower. A political meeting was held in Macon that year which was attended by three Governors. Altgeld of Illinois came, as did Boies of Iowa, and William Joel Stone of Missouri. Throughout this campaign the Republicans had repeatedly referred to Missouri as "a robber State." This slogan had a long and involved background which I shall not here attempt to unravel, but in Macon, in October 1892, this charge was answered with rare eloquence by William H. Wallace of Kansas City, lawyer, Prosecuting Attorney of Jackson County, and prosecutor of the James gang. He wrote it on the train coming from Kansas City to Mason, and delivered it that night. I here reproduce it in full, as being very worthy in itself and of having equal value as being an index of the era and of the men who lived in it. This is the speech of William Wallace:

"Grand, beautiful, magnificent Missouri! Where rolling prairies, fertile valleys, mighty forests, placid lakes, majestic rivers enchant the eye and woo the heart; where flowers of every hue and clime freshen in the evening dew till the green ivy of the north and the fragrant magnolia of the south meet each other in a common

home, and rebuking sectional hates entwine their arms in tenderest love; where birds of every note, and plumage, wend their flight, from the hummingbird that flutters in the honeysuckle to the eagle that builds his eyrie in the craggy cliff, while the nightingale, the bobolink, and the mockingbird wake the forests with ringing melodies sweet as those that rose in paradise; where the perch, the croppie and the bass leap in the sunbeams and the hunter's horn rouses the fleet-footed fox and the bounding deer!

"Fertile, bounteous, exhaustless Missouri! Where yellow harvests are locked in the golden sunshine rich as those that ripened in the land of Nile; where corn and cotton flourish in a common soil, and the apple and peach grow in luscious beauty side by side; where exhaustless beds of coal, lead and zinc lie sleeping in the earth and mountains of iron await the blazing forge.

"Enterprising, majestic, imperial Missouri! Where more than half a million souls have swelled our numbers during the past decade; where the lights of a genuine Christian civilization, life's vestal virgins, hold their vigils unerring and undying as the silvery stars, and where under the soft and hallowed flame Progress, like the Hebrew giant, bursting the withes commercialism is ever tying about his limbs, is leaping forward in the great race for material wealth and glory with bounding strides, unsurpassed in all the sisterhood of states.

"Educated, intelligent, God-fearing Missouri! Where school houses so thickly dot the hills and plains that voice meets voice of merry children romping on the lee till one vast chorus mounts the skies; where from every city, village and hamlet, the graceful spire and the

church-going bell call the way to Heaven; where thousands of Christian homes cluster by the rivers and on the hilltops with the open fire and the dancing flames, with the old arm chair and the well-worn Bible—cherished scenes, where first we learned to lisp the name of father, mother, sister, brother. Sacred, hallowed old Missouri soil! Beloved land of mingled joy and grief! Where all the flowers of youth have bloomed and grown and childhood's merry laughter in gleeful echoes lingers still to cheer and thrill the drooping heart. Where many a hope has perished in an hour and many a falling tear has found a grave; where our mothers first taught us to kneel in prayer, and where under the willows and by the brooks the forms of loved ones go before us, await our coming to slumber by them till the resurrection morn. Beauteous, glorious, consecrated old Missouri soil! Let others defame you as they will—thank Heaven, in life, in death, you are good enough for me."

VII

BORDER WARFARE

The tragedy of Missouri was the tragedy of the nation and each of its component parts. Perhaps it was inevitable, once the bad beginning had been made. Perhaps had our people had more charity, more vision, more compassion in their hearts, the great schism would not have opened, but with our human limitations, we went, without deviation, into the chaos of civil conflict. The prelude to this unhappy time was a golden age, a time of pleasantness and peace. The people who lived along the western border of Missouri were stable, prosperous and content. They built fine homes, owned blooded horses and fine cattle, had many broad acres of land and millions of dollars' worth of negro slaves. In the 1850's, they realized that the territory immediately west of them would, in the near future, be open for settlement. They naturally wanted that territory to be a slave state when statehood came to it, in order that their own investments in slaves be protected. Their whole economy was built upon slavery and the operation and maintenance of their whole social order was based upon the functioning of that institution. Repeatedly, the Missouri Legislature petitioned Congress to buy this land from the Indians and to organize it into territories. Finally in the

middle 50's, Congress passed the Kansas-Nebraska Act, creating two territories. The Missourians wanted Kansas to be a slave state and were willing that Nebraska should be a free state. This is probably what would have occurred, had it not been for the unusual influx into Kansas territory of Abolitionist immigrants from New England, who came for the sole purpose of making Kansas a free state. The attempt to accomplish this was made in numerous ways. Raids were made into Missouri and slaves were bodily kidnapped and taken out of the state. Many of the Kansas people came secretly into Missouri, talked to the slaves, imbued them with a dissatisfaction with their condition in life and persuaded them to run away. On these forays, all manner of property which was transferable was stolen and taken into Kansas territory. These people were also active in removing negroes into Canada by taking them through Nebraska to Iowa, where the underground railroad started them on their way to Canada by a route going through Grinnell, Iowa, and Galesburg, Illinois.

It very soon became clear to Missourians that if Kansas became a free state, the western part of Missouri would lose all of its slaves. In order to keep Kansas from becoming a free state, many Missourians went into Kansas, entered into political activities there, and exercised all of the influence which they could command in order to protect their interests in Missouri.

United States Senator David R. Atchison, one of the leading statesmen of his time, addressed military meetings throughout western Missouri and led numerous invasions into Kansas in order to make that territory a slave state. Other prominent men who did the same

thing were former Attorney General Stringfellow, of St. Joseph, Claiborne F. Jackson, who later became Governor of Missouri, and Mayor Payne of Kansas City. A delegation of students from the University of Missouri, in Columbia, with the consent of the President of that institution, went into Kansas and voted in order to swing that state into the slave column. Whether these Missourians were right or wrong is perhaps a matter of individual opinion, but we do see now that many of them were not ruffians and outlaws, but were some of our finest people, and we see further that their primary motive was not the perpetuation of human slavery, but the protection of an institution which was prerequisite to their way of life, a way which had been productive, for both whites and blacks, of a life which was gracious, stable, and serene.

As time went on, the situation became increasingly tense. Repeated and destructive raids were made by John Brown of Osawatomie, during which he stole many slaves and killed a great many of our people. On numerous occasions, troops were sent by the Governor of Missouri to the western border to protect people and property.

When this situation was at its worst, the war between the States broke out. The United States Government raised thousands of troops in Kansas. These troops raided Missouri from the Iowa to the Arkansas line, killing citizens and carrying away all livestock and personal property which they could find. Out of this situation there arose the border leaders whose names, within a few years, were known throughout the world.

The James family lived on a farm in Clay County,

about twenty-five miles north and east of Kansas City. The father was a minister who came from Kentucky in the early 40's and operated a farm, while filling various pastorates throughout the County. He was a very devout man, and held many revival meetings with great success. In 1852, he left Clay County and his family to go to California in the gold rush, hoping to repair his fortunes. However, he died within a short time after reaching California and was buried there. His widow was left with four young children, the two oldest being Jesse and Frank. Some time later, she married Dr. Samuels, a physician, and continued to live on this farm.

One day, a raiding party of soldiers from Kansas, locally known as "Red Legs" because they wore red leggings, appeared at the farm and demanded that Dr. Samuels tell them where some Southern soldiers were hiding. When he replied that he did not know, they hung him from a tree and lashed him with a cattle whip, leaving him for dead. The boys and their mother were compelled to stand by and witness the incident. Although Dr. Samuels did not die, he was an invalid for the remainder of his life. Before leaving, the Kansas troops told the boys that they would be back and that if the boys were there, they would be killed. Shortly after that, Jesse and Frank took to the woods and found and joined Quantrill's Guerrillas.

William Clark Quantrill was one of the world's greatest guerrilla leaders, a picturesque character on the border, worshipped by many southern sympathizers. He surrounded himself with young Missourians, many of whom were still in their teens. These men later became the greatest cavalry fighters of their generation. While

not enrolled as regular soldiers, these men fought with the armies of the South, commanded by Price, Forrest, and Shelby. General Joe Shelby commanded a troop of Missouri guerrillas, called Shelby's Brigade. His story is a curious one. A fanatical believer in the Confederacy, he refused to surrender after Appomattox. His brigade followed him to a man. Moving into Texas, Shelby crossed the Rio Grande and led his men to Mexico City. This one-thousand-mile march was one of hunger and hardship. Upon their arrival in Mexico City, they offered their services to Emperor Maximilian, the Austrian Prince placed on the throne of Mexico by Joseph Napoleon. After a few days of deliberation, Maximilian declined the offer, leaving Shelby and his men stranded in a foreign land. This turned out to be the Emperor's biggest mistake. A few years later, Juarez, the rebel leader of Mexico, defeated him. He was condemned to die on June 19, 1867. Had he accepted Shelby's offer, the story of Mexico would doubtless have been very different. The map of the world could have been changed and General Shelby himself might have reached the throne of Mexico, but as it was, rebuffed and unable to hold his men together any longer, Shelby disbanded his brigade. His dream of glory had ended and he sank into obscurity.

It was of such men as these that Quantrill's Guerrillas were composed. They had been organized as the result of an incident which took place soon after the beginning of the Civil War. Quantrill and his brother were passing through Kansas territory on their way to California when they were assaulted by the Red Legs. The brother was killed and William left for dead on

the prairie. He was rescued by an Indian squaw and later went to Topeka, Kansas. There he joined the Red Legs, sought out the three men who had killed his brother and became friendly with them. After inducing them to join him in a raid in Missouri, to steal horses, he notified the authorities of Missouri when and where the raid would take place. The three Red Legs were killed. Quantrill gathered together his troop of guerrillas and waged a savage, unremitting war upon his enemies. Jim Lane and Jennison were by now the most active and prominent leaders of the Kansas outlaws and made many raids into Missouri. They looted and burned Osceola, leaving about thirty citizens lying dead in the streets. Then they sacked and looted Butler, Parkville and other distant towns, destroying everything in sight. Upon returning to Lawrence, Kansas, they sold the stolen property at public auction. Finally in 1863, Quantrill surrounded himself with some 250 of the most daring young raiders in the country and attacked Lawrence, Kansas. They shot and killed every man they found, burned and destroyed practically every dwelling and left the town in ruins. Jesse and Frank James were with Quantrill on the Lawrence raid. They had seen the ruins of Osceola, Butler, and other towns and, like Quantrill, they had struck back to defend their homeland.

About this time, the Federal Government issued its Order No. 11, requiring all residents of Cass, Jackson, Bates and Vernon Counties, except those living within one mile of the principal towns, to abandon their homes within fifteen days and prove to their Military Commander their loyalty to the Federal cause. If they were

able to do this, they would be permitted to live in military towns; otherwise, they were ordered to leave those Counties, all of their property was to be confiscated and their homes burned. In some Counties with nearly ten thousand residents, only about five hundred were able to prove their loyalty and so remain. Jesse and Frank James were witnesses to all this and many of their relatives and friends were affected by it. At this time, the Northern armies arrested some twenty-five young women living on farms just east of Kansas City, alleging that they were furnishing information to Quantrill regarding the location of Federal troops. These young ladies were brought to Kansas City and imprisoned in an old, dilapidated house near the river which had been condenmed as unsafe for habitation. The day after their incarceration, the building collapsed and most of them were killed. The rest were bruised and mangled. A number of the imprisoned girls were friends of the James boys. Bill Anderson, who became Quantrill's most dangerous lieutenant, had a sister killed there. George Todd, another of Quantrill's lieutenants, had a sweetheart killed.

The men of Quantrill never slept in buildings, but during the entire war, lived outdoors. They were among the finest marksmen ever known. They staged the Centralia massacre in return for the inhuman killing of ten Southern sympathizers at Palmyra. Never in the history of this or any other state has more cold-blooded murder been committed under the guise of legal action than at Palmyra. These unfortunate ten men were selected by the drawing of lots from three Missouri Counties, were taken to the Fairground and compelled to dig their own

graves. They were then seated on wooden coffins, into which they fell when shot by a firing squad. They were innocent of any wrong-doing. A Northern man had disappeared from the town and it was thought that he had been kidnapped by the Confederate raider Porter. Federal General McNeil posted notices that, unless he were returned in ten days, ten civilians would be executed. At the end of the ten-day period, the citizens were selected as I have said above, and were executed. This massacre was the most brutal of the whole war and was wholly without just cause. The James' home was raided many times during the war and the family subjected to many hardships. At the end of the war, Jesse and Frank returned home, offered to take an oath of loyalty and establish their allegiance to the victorious nation. Because they had been Guerrillas, and because it was said that they fought under the Black Flag, they were denied the right to take the oath; henceforth, they became outlaws. The story of their subsequent lives is the most colorful in America.

VIII

FRANK AND JESSE JAMES

With all avenues of return to a peaceful, honest way of life closed to them, and thoroughly embittered by a relentless persecution on the part of the State, a persecution which frequently turned upon wholly inoffensive members of the James family, Frank and Jesse James turned to a life of outlawry. For the ensuing seventeen years they operated in all parts of the country west of the Mississippi River, in the midst of populous areas of the country, and were never apprehended. During this entire period of time the Pinkerton Detective Agency made every possible effort to capture them; railroads and banks offered large rewards for their capture, dead or alive, all to no avail. In view of these overwhelming odds against them, it seems incredible that they escaped apprehension. They were, beyond doubt, wary, elusive, bold, and desperate, probably to a greater degree than any other men who ever lived in this country. But regardless of these unusual personal attributes, their way of life for such a period of time would have been impossible had it not been for the fact that they operated in an area in which they had legions of friends. Many of these friends were personal, but the great majority of them were people who had fought in the War Between

the States on the side of the Confederacy, or who were Southern sympathizers and who regarded the James boys as continuing that desperate struggle long after the armies of the South had quit the field. These two men, and those others whom they gathered around them, became to the Southerners the flaming symbols of the "lost cause." Every effort was made by these people, and throughout the area in which the James gang operated, to give aid to them in every possible way. They hid them in their homes and about their places; they supplied them with horses, food, medical care, money, and every possible assistance. On the other hand, they did all that they possibly could to baffle their pursuers. This situation, combined with the extraordinary personal qualities of the two men, enabled them to pursue their careers unchecked.

Throughout Missouri, during the period of activity of the James gang, discussion raged regarding their activities and the justification for them. That they had much to embitter them was certainly true. One winter night, railroad detectives surrounded the James home where the mother and stepfather resided with several younger brothers. Thinking that Frank and Jesse were in the house, but without finding out whether they were, a detective named Winchell threw a bomb through the window of the sitting room. It exploded in the faces of the members of the family, killing the youngest child, tearing off Mrs. Samuels' left arm, and inflicting injuries upon the remainder of the family. Winchell was found dead on the public highway many months later.

Friends of the James' claimed for them that they robbed only the rich and that they gave freely to the

poor. They further claimed that the railroads had hired detectives to capture them, had offered rewards for their capture, and that it was for this reason that they held up railroads throughout the country. They likewise defended them by reminding their enemies that banks had likewise offered rewards for their capture and had, therefore, driven them into a life of outlawry. Their way of life, considering their hunted condition, was unique. They never frequented wild west cities like Dodge City, Abilene, Wichita, Deadwood, or the mining camps. They made no pretense of being bad men, but associated with good, respectible citizens. For long periods of time they lived under assumed names in the best hotels, in such cities as San Francisco, Denver, Dallas, Fort Worth, Nashville, Louisville, Chicago and St. Louis. Both married and reared families. Many times they attempted to arrange a surrender to the Missouri authorities in order that they might become reinstated in civilian life, but all of their offers were declined.

During the years of their greatest activity, Frank and Jesse James surrounded themselves with some of the most formidable men who ever lived in the United States. Foremost of these were Cole, Bob, and James Younger. Others drifted in and out of the gang, but the Youngers and the James were the constant nucleus of it. That they were credited with many things which they did not do is certain. A bank robbery in Minnesota one night and a train robbery in California the following morning were both frequently attributed to the James, as were many other crimes which were manifestly impossible for them to have committed. It is also certain that they did commit many acts of banditry. As time

went on, the idea that they were carrying on the cause of the South became increasingly difficult to follow, as did the thought that they were conducting a war against the rich in behalf of the poor. Regardless of their motives in the beginning, they ended by waging a savage war against authority and organized society, and, as has been noted before, with the enthusiastic approbation and active assistance of thousands of members of that social system.

When Thomas T. Crittenden, of the famous Crittenden family of Kentucky, was elected Governor of Missouri in 1880, he was determined to destroy the James gang. Knowing that the railroads had been the principal sufferers, he induced them to give him $50,000 to be used in the pursuit. He realized that it was very likely that the James brothers would never be captured alive, but he felt that if the reward for killing them was made large enough, some of their friends or associates would turn against them. Therefore, he offered a reward of $5,000 each for the taking, dead or alive, of both Frank and Jesse James. It may be noted here that neither Governor Crittenden, who offered the reward for the James, nor William H. Wallace, who prosecuted Frank James at Gallatin, were ever elected to another office in Missouri.

Governor Crittenden, with deadly intuitiveness and knowledge of the weakness of human nature, had adopted the one sure method of bringing about the destruction of the James. He based his plan upon the certain knowledge that everywhere, and at all times, there are people to whom the acquisition of money means more than loyalty or friendship. He shrewdly surmised

that Frank and Jesse James had some such associates. In this he was entirely correct. For a number of years prior to this time, the brothers Robert and Charles Ford, while not exactly members of the James gang, had been loosely associated with it, and were well acquainted with Frank and Jess. Soon after the announcement of the reward by Governor Crittenden, the Fords contacted the Governor and agreed to capture Jesse James, who at that time was living in St. Joseph, Missouri, with his family under the name of Thomas Howard. The authorities of the state of Missouri knew, of course, that Jesse James would never be captured alive by the Fords. What passed between the state authorities and the Ford brothers can only be surmised by subsequent events.

Both the Ford brothers had access to Jesse James' home. They were in his home on the morning of April 3, 1882, and were armed. Jesse got upon a chair to straighten a picture hanging on the wall. At this time, Robert Ford shot him in the back and killed him instantly. The Fords immediately surrendered, were brought to trial and were found guilty of murder in the first degree. On the same day, they were granted a full pardon by Governor Crittenden.

Major Edwards, a political writer on the Kansas City Times, an ardent defender of the James boys, in writing of the killing of Jesse, said: "There never was a more cowardly and unnecessary murder committed in all America than the murder of Jesse James. Here, the law itself becomes a murderer. It borrows money to pay a reward for murder. It promises and gives money and protection to murderers." Joseph Pulitzer, editor of the great paper, the St. Louis Post-Dispatch, expressed sat-

isfaction that the life of the outlaw, Jesse James, had ended, but severely criticized Governor Crittenden for the method which he had used. Leading newspapers throughout the United States took the same position. People, generally, throughout the country were highly critical, and overnight Jesse James became a popular hero. For many years afterward, a ballad was sung in all saloons, at street shows, and other public places, each verse of which ended, referring to Robert Ford, "And the dirty little coward who shot Mr. Howard has laid Jesse James in his grave." The Fords were given the reward money according to the terms of the Missouri Governor. They did not live to enjoy it very long, and they did not come to a good end. Within approximately a year after the killing of Jesse James, Robert Ford himself was killed in a gambling house in Cripple Creek, Colorado. A short time after this Charles Ford committed suicide.

On October 5th, following the killing of Jesse the preceding April, Frank James, accompanied by Major Edwards referred to above, appeared at the Governor's office in Jefferson City. He surrendered, handing the Governor his two pistols which he stated had never been beyond the reach of his hand since 1861, when he started as a raider with William Clark Quantrill. The Governor promised him a fair trial. After a thorough scrutiny of the record, the State concluded to try Frank James at Gallatin, Missouri, for the murder of Billy Westfall, a Rock Island conductor at the time of the holdup of one of its trains. Chief counsel for Frank James was Judge John F. Phillips, who was a member of of the Supreme Court of Missouri. He vacated the bench

temporarily for the purpose of the trial. He stated that many years before he had promised Frank's wife that he would defend him if he were ever brought to trial. Phillips was later a Federal Judge in Kansas City for many years.

This trial lasted many days. It was held near the Iowa line, with the State holding all of the advantages of the weight of adverse opinion. James' defense was an alibi. He further stated that neither he nor Jesse had broken the law for many years and had been law-abiding citizens. William H. Wallace, one of the most able lawyers of his day, prosecuted Frank James. He was a natural orator and an indefatigable worker. He spent nearly a year preparing the case for trial. He was a very ambitious man and wished to be Governor of Missouri. He believed that he could ride into office on the successful prosecution of the brother of Jesse James. In his closing argument, referring to the dead Jesse, he said: "Farewell, Jesse James, prince of robbers; Missouri cries a long, a glad farewell! Cruelest horseman that ever wore a spur or held a rein, seeming oftener like death himself, on his pale horse charging through the land, than feeling man . . . farewell, farewell! Foulest blot that ever marred the bright escutcheon of a glorious state, hanging for years like a thing of horror in our very zenith, frightening science and civilization from our borders, I condemned the manner of thy taking off, yet I could but join the general acclaim, when, seized with the shock of death, we saw thee reel in thy orbit, and then plunge forever into old chaos and eternal night." The jury was out only a short time and returned with a verdict of acquittal. Immediately, presumably because they could

not be proved, all other charges against Frank James were dismissed, and for the first time since 1861, he ceased to be a hunted man. He lived in Missouri for about forty years and was highly respected. He and Jesse were buried on the old home place at Kearney in Clay County, a short distance from Kansas City. Their graves are visited each year by thousands of people. Frank James' widow died at the James homestead in 1944, when past 90 years of age. Until the last, she spoke of her husband with pride and affection.

That the James did do many acts of kindness is beyond dispute. Many families, left fatherless by the Civil War, were helped by them. On one occasion, Jesse stopped at a farmhouse in Kentucky for a drink of water. He noticed that the woman of the house was alone, and seemed to be in distress, judging from her harassed look and anxious manner. Upon questioning, she divulged the fact that the farm was mortgaged, and the banker in the nearest town was coming that very day to foreclose. Jesse questioned her further, learned that the farm had been in the family for years, and that the amount of the mortgage was $1,500. He explained that he had known one of her sons, killed during the war while fighting in the Confederate Army, and would like to help her. He instructed the woman to get a receipt in full for the money, gave her the $1,500 and rode away. After riding a short distance, he wheeled his horse, hid himself in the underbrush near the house, and awaited the arrival of the sheriff and the banker. After watching the woman turn the money over to them, he trailed them, held them up, and retrieved the $1,500.

The most severe setback ever suffered by the James

gang was the raid upon the bank in Northfield, Minnesota, in 1876. They went on horseback, wearing linen dusters which concealed both their clothes and their weapons. Two Northfield citizens were slain. Approximately one thousand men participated in the pursuit that followed. When the fighting was over, Jim Younger had five wounds; Cole Younger eleven; Thomas Coleman Younger was down, badly wounded, and subsequently died. Later the three remaining brothers pled guilty and were sentenced to imprisonment for life in the prison at Stillwater, Minnesota. Robert Younger died in the Penitentiary in 1889. In 1901, the other two brothers were pardoned. About two years later Jim Younger committed suicide. Cole returned to Missouri, where he lived for many years. He was engaged in show business for a time, and in his later life became an evangelist. Whether Frank and Jesse James were on this expedition is not known for a certainty, but two men did escape from the Northfield debacle, and it has always been presumed that they were Frank and Jesse.

Jesse James, Jr., son of the noted bandit, grew up in Kansas City, where his mother and sister came after the death of the father in St. Joseph in 1882. When he was about 12 years of age he answered an advertisement in the *Kansas City Star,* by T. T. Crittenden, Jr., son of the Governor who had offered the reward for the killing of Jesse James. The ad was for an office boy in the Crittenden real estate office. Jesse James, Jr., was selected over many other applicants for the position, and worked there for a considerable period of time, going to night school in the meanwhile. When he was about 19 he was given the concession at the Jackson County Courthouse

to sell cigars, candy, newspapers and other items. In this way he became acquainted with many lawyers, all of whom treated him with respect and consideration. About this time he commenced to study law at the Kansas City School of Law. During this period Bill Ryan, who, it was alleged, had been in the James gang, appeared in Kansas City and frequented the vicinity of the newsstand run by Jesse, Jr. Soon after this a Missouri-Pacific train was held up by two armed men at Leeds, in Jackson County, and a considerable amount of money was taken. Railroad detectives, for no reason other than past associations, suspected young Jesse and Ryan. They were arrested and brought to trial, the trial of Jesse being held first. James A. Reed was at that time Prosecuting Attorney of Jackson County and was one of the very best in the country. Young Jesse was defended by Frank P. Walsh, a young man but a very fine jury lawyer. The Crittendens testified regarding the good character of the defendant. It was a very hard-fought trial. Walsh defended on the theory that the railroads, having failed to convict Jesse, Sr., or Frank, would not rest until they had convicted some member of the family. After a lengthy trial young Jesse was acquitted. Thereafter he was licensed to practice law and did practice in Kansas City from about 1900 until 1923. Most of his business was appearing for the defendant in criminal cases. He tried a great many such cases and was quite successful. In 1923, he asked me to take over the handling of the defense of one Don Thompson, who had appealed an unfavorable verdict to the Supreme Court of Missouri. Young Jesse at this time was engaged to go to Hollywood, California, to assist in directing the pic-

ture "Jesse James Under the Black Flag." This picture was subsequently made and was shown all over the United States. Jesse James is still on the West Coast.

Regardless of the justice or injustice of the actions and charges against them, or of their own motives, Frank and Jesse James have passed into legend. They are still spoken of by many Missourians, as they sit about their fires at night, with admiration and respect, as men who took up the falling torch of "The Lost Cause" and almost single-handed flaunted it in the face of the enemy. They were the product of a tumultuous era. Feeling was very bitter, and the most primitive elements in the characters of people were abnormally developed. At the distance of this time and place, it is easy to pass judgment upon the James boys, and to condemn them. What we would have done had we occupied their position and had breathed the air and absorbed the atmosphere which they did, we can in no way foretell. Both Frank and Jesse, so far as there is any indication whatever, were personally honest, paid their debts, and in all personal relations of life conducted themselves as honest men.

That many Missourians now have a soft spot in their hearts for Frank and Jesse James cannot be denied. Time has mellowed the memory of their misdeeds, of which there certainly were many. The manner in which Jesse came to his death, through the treachery of a trusted friends, which treachery was induced by the state of Missouri, was a powerful factor in turning public sentiment in favor of the brothers. Perhaps the attitude of people of the time of Jesse's death, and their attitude now, is pretty well expressed in the song which appeared soon after the death of Jesse, which was sung

in high places and low throughout United States for many years, the first verse of which follows:

"Jesse James had a wife;
She's a mourner all her life;
His children, they were brave.
Oh, the dirty little coward that shot Mr. Howard!
And laid Jesse James in his grave."

IX

IN THE LEGISLATURE

Hitherto, all of my activity had been in the practice of law which I had followed with assiduity and as great of degree of success as I had any reason to expect. In the fall of 1906, I was elected representative from Macon County, and entered upon a new and highly interesting phase of my career. I immediately extended my circle of acquaintances and came into contact with many interesting and brilliant men. I also found the making of law a very absorbing matter. When I went down to Jefferson City shortly after the first of January, 1907, I had never witnessed a session of the Legislature, and knew very little about it.

The first problem that presented itself to me was the appearance of Reverend Claude Pool, an old minister from my County, who with two or three friends, came to me and said that he wanted to be Chaplain of the House. He was a very colorful figure. Following the war between the States, he had refused to take what was called the Drake test oath, a vow taken to prove that one had never rendered aid to or sympathized with the Southern cause. Upon his refusal, he was forbidden to preach. I felt obliged to give him all of the help that I could, but I was at some loss to know where to direct

my effort. After some inquiry, I found that the officers of the House were selected by a caucus of the majority party, that this caucus would be held two nights later and that the officers receiving the highest number of votes at this caucus would be selected. I learned that there were at least four other candidates for this position, one of whom was being sponsored by a State Senator, Frank H. Farris, of Crawford County. Farris at this time was the most able man in the Legislature and a great orator. I had heard of him for a number of years and assumed that his would be the strongest candidate. I concluded to nominate Reverend Pool last, so I waited until all of the other candidates were placed in nomination. Farris also waited, but finally nominated his man. Then I placed Reverend Pool in nomination. I told of his terrible hardships during the Civil War and of how he was denied the right to preach or pray. I closed my nominating speech with a recitation of the 23rd Psalm, and my candidate was elected. I considered this to be a very great triumph and was correspondingly elated, but my victory, to a certain extent, turned to ashes in my hands, because the Chaplain whom I had elected insisted on delivering extremely long prayers. The members of the House were unanimously of the opinion that the shortest prayer was the best prayer, and I, therefore, had the rather grim responsibility of continually asking Reverend Pool to make his conversations with the Lord more brief.

At this time, Joseph W. Folk was Governor of the State, having been elected two years before on a reform ticket, because of the splendid work he had done as Circuit Attorney of St. Louis, where he prosecuted bribe

givers and bribe takers. The old line Democrats felt that he had destroyed the party and he was, therefore, never again elected to an office in Missouri. I found him to be a very agreeable man and I thought he made a good Governor.

Near the end of the session, there was a movement within my party to make me Speaker of the next Legislature. I was again a candidate from my County and was re-elected in 1908. Herbert S. Hadley, the Attorney General, had been elected Governor, and Republicans were in office for the first time since 1872. They controlled the House of Representatives. I was my party's candidate for Speaker.

At this session, there was a contest before the Legislature for the office of Lieutenant Governor; Jacob F. Gmelich was the Republican candidate and William R. Painter of Carrollton, the Democratic candidate. The margin of votes between them was slight and it was agreed to recount all of the votes in St. Louis, as it was the only place in the State that the Democrats claimed that fraud had been committed in the election. I was on a committee from the House which met with the committee from the Senate and we spent thirty days in St. Louis, counting the ballots which had been cast there. Finding no fraud or error, we recommended the seating of the Republican candidate, which was done. His attorney was Forrest C. Donnell, later Governor, now United States Senator from Missouri.

In this session of the Legislature, on a joint ballot, the Democrats had a majority of five. Senator Stone had secured the Democratic nomination in the primary and former Lieutenant Governor John C. McKinley, the

Republican nomination. Stone had defeated Governor Folk in a hard primary fight and some of the Folk Democrats in the Legislature did not want to support him. Hadley had been elected Governor in the same election. There were rumors about the Capital that the Republican House intended to disqualify several Democratic members so that they would control the joint assembly. Senator Stone prepared and gave to me challenges against Republican members of the House, to be used in the event that Republican members started challenging our members. I had no further instructions. On the roll call, before any of the Democrats whom we thought would be challenged were reached, two Republican names came up. I considered challenging them first, but decided against it. No challenges were filed against any member and Senator Stone was re-elected. He later said that if I had challenged the Republicans first, he would not have been elected.

The 1909 session was exceedingly partisan. The majority leader was Hiram Lloyd of St. Louis, who had been a member of the House of Delegates of that city and was adept in parliamentary strategy. He was later Lieutenant Governor. The Republicans felt themselves to be responsible for legislation passed, and few measures introduced by Democrats were even considered. The Democrats, in turn, felt it necessary to disrupt the Republican organization. At that time, the wet and dry question was a burning issue in Missouri, and the Democrats concluded to support a constitutional amendment for prohibition. Many of our members from the city were bitterly opposed to it, but agreed to it in order to embarrass the majority party, for at least half of the Re-

publicans were opposed to such an amendent. They were finally forced to report the amendment without recommendation, and we, therefore, attempted to file a minority report recommending the passage of the amendment. The majority moved the previous question, as that would have prevented discussion. While the House was in confusion, I notified the Speaker that if the Democrats were not recognized to offer a minority report, as the rules provided, all the Democrats would leave the House and there would not be a quorum present. Thereupon, all of the Democrats left the House and went over to the Senate chambers, as the Senate was Democratic. The Sergeant-at-Arms of the Senate barred the Senate doors and refused to allow the House Sergeant-at-Arms to arrest the House members. An agreement in regard to the matter was finally reached, the House members returned, and the rest of the session was fairly peaceful.

While I was in the Legislature one of my associates was W. R. Huston of Cass County, who was Chairman of one of the legislative committees. He employed me to sue for libel the *St. Louis Post-Dispatch.* In its headlines, the paper had accused Huston of being friendly with the "lobby," and delaying the report of a bill from his committee. The word "lobby," as generally understood, has a sinister meaning because most of the corporate interests maintained representatives throughout the legislative session to represent them before committees. To accuse one of being too friendly with the "lobby" was to intimate that he was part of a corrupt system. The Supreme Court of Missouri had held several times that suits against newspapers could be filed in

any County where the newspaper was circulated. Thereupon suit was instituted at La Plata, and the well-known firm of Judson and Green of St. Louis appeared for the defense. The jury returned a verdict of $30,000 in favor of Huston and the defendant appealed to the Supreme Court. There, the Court overruled the line cases, holding that a newspaper could be sued in any County in which it was circulated, and held for the first time that a newspaper could only be sued in the County in which it was published. The judgment was, therefore, reversed and Huston recovered nothing.

Between sessions in the Legislature, I continued the practice of law at La Plata. I was employed in many interesting cases, one of which came up when the George W. Gist Construction Company was grading several miles of right-of-way on each side of La Plata for the double tracking of the Santa Fe Railroad from Chicago to Kansas City. The company had a camp and commissary west of La Plata. Since labor was scarce, employment bureaus in Chicago would furnish free transportation to the camp at La Plata. Many hoboes, with a yen to follow Horace Greeley's advice, would accept such transportation simply for the ride. Upon arrival at the camp, the "method in their madness" would immediately become apparent.

One such case was Tom Moore, a laborer who appeared at the camp around noon one Saturday. He complained of not feeling well, but insisted that he wanted to go to work on Monday. Therefore, he was given a place to sleep, some shoes and clothing, and meals until Monday. Early that morning, Mr. Gist was notified by his foreman that Moore had refused

to work and had checked off the job. Gist became angry and decided to consult with Moore about the matter of transportation, clothing, and food he had received in advance. The interview turned out very badly. Moore refused to be concerned about such trivial items. The conversation waxed warm, and when Moore decided that his was definitely one of those cases where absence would make the heart grow fonder, and acted accordingly, Gist shot at him and wounded him in the leg. He was immediately taken to the company hospital at Burlington, Iowa, for treatment. Mr. Gist came to my office, told me the circumstances, and asked me to go to Burlington and make an adjustment. This was accomplished speedily.

Mr. Gist then employed me to represent him in a suit which was pending in the municipal court in Chicago before Judge Fake. He had sued some wealthy Chicagoans for several hundred thousand dollars for building two irrigating canals, The Paint Rock Canal and the Shell Creek Canal, in the Big Horn Basin, Wyoming. I went to Wyoming, and spent several weeks in going over the canals and interviewing witnesses. Then I assisted in the trial at Chicago.

The opposing counsel was Henry R. Rathbone, one of the leading trial lawyers of Chicago, and later Congressman-at-large from Illinois. His father was the Major Rathbone who was in President Lincoln's box the night of his assassination by the actor, John Wilkes Booth.

My client had employed a detective agency to watch the jury and to report its actions, but this had been done before I became involved in the case.

After the case had been on trial for about three weeks, a juror arose in the box and informed the Court that he was being shadowed and watched. He was indignant, impressed upon the court room in general the fact that he was a law-abiding citizen, and therefore could not understand why each time he went home, he was followed, and each time he and his wife left his house for an evening out, they were watched. After this statement the Court took a recess, sent the jury to the jury room, and asked counsel on both sides to meet in the Judge's chambers. I advised the Court that we had employed detectives, but had instructed them not to interfere in any way with the jury nor to speak to them. The Court announced that if the jury knew which side was having them shadowed, prejudice was doubtless to be expected. We agreed to say nothing about it, so that the jury would have no knowledge of which side employed detectives.

The case went on for several days. Finally, Mr. Rathbone arose in court before the jury and stated that he could stand it no longer . . . that every juror looked at him with suspicion and belief that his side had caused them to be shadowed. Thereupon the judge promptly dismissed the jury, and the trial ended. It was later settled.

In 1908 I was employed by the County Court of Macon County to represent the county in the biggest litigation it had ever had. This had been raging for nearly forty years, and was known as the Missouri and Mississippi Railroad Litigation. Right after the Civil War the central part of the United States was railroad-minded, and every community was trying to get a

railroad. Laws were passed allowing states, counties, and cities to issue bonds in aid of railroad construction. Some slick salesman from the east appeared in northeast Missouri and proposed to build a railroad from the Mississippi River in the northeastern corner of the State to the Missouri River in the center of the State. It was to start nowhere and end nowhere. Clark, Scotland, Knox, Macon, Randolph, and Howard were to be the lucky counties. Each one tried to outdo the other in issuing bonds. The County Court of Macon County issued $350,000 worth of bonds without a vote of the people and without letting the people know anything about it, although it was well known that a majority of the people were against the project. The bonds were turned over to the railroad builders who immediately endorsed them for value received, and sold them to eastern financial concerns. Our bonds were purchased by the wealthy Huidekoper family of Pennsylvania, who claimed to be innocent purchasers for value before maturity. The other counties issued their bonds, but it soon became apparent that the counties had been gypped and that no railroad would ever be built. There was a little grading done and a few cuts filled, which may be seen today, but no engine ever puffed over a railroad track. The people never even got a puff from their bonds. The bondholders, however, insisted on the payment of their bonds. The Act under which they were issued and the bonds themselves provided that a tax levy should be made to retire the bonds in an amount "not to exceed 1/20 of 1% upon the assessed valuation of the taxable property for each year."

Macon County thereupon offered to comply with its contract and to make such a levy each year. The bondholder, however, discovered that the small amount of money produced from this levy did not nearly pay the interest on his bonds. He thereupon filed a suit, asking that a general levy be made against all of the property in the county to pay his bonds as they matured. The county resisted this suit successfully in the Supreme Court of Missouri. That Court held that the only obligation of the county was to make the levy provided for in the bonds and that if it were not enough to satisfy the bondholder he would have to ask relief from the Legislature. The bondholders didn't like this decision at all and they appealed to the Supreme Court of the United States. That Court at first sustained the Supreme Court of Missouri, but later reversed itself and finally held that the levy provided for by the law and in the bonds of 1/20 of 1% was an additional security for the bondholders. The county was therefore required to make a general levy in addition to the special levy for the payment of the bonds. It was a complete victory for the bondholders and a defeat for the county. For many years thereafter Macon County made the levy as required by law but consumed as much of the money as possible in building bridges, highways, and other improvements so that there was nothing for the bondholder. For years the Collector and Treasurer of the County kept all the tax collections in their pockets and did not put them in the Treasury. So that when Federal Marshals levied on the Treasury there was no money there. This caused a cloud to hang over

Macon County for nearly fifty years like the sword of Damocles. The people thought it might fall at any time and their property would be confiscated. It was spoken of in whispers because the people did not want to advertise the terrible debt against their County because no one would come into the County from outside.

The Missouri Supreme Court had construed the Missouri Law and the Missouri Contract favorable to the County. Under the Rules of Decision Act, it was the mandatory duty of the Supreme Court of the United States to follow the ruling of the Supreme Court of Missouri. However, the Supreme Court of the United States took the bit between its teeth and refused to follow the ruling of the highest court of our state although required to do so. Had the general law of the land been followed by the Supreme Court of the United States, Macon County would not have had to make a levy in excess of 1/20 of 1% on all the taxable property in the county to pay such bonded indebtedness. It was a plain swindle on the people of Macon County and the Court should not have protected a swindler.

For years Macon County defeated the bondholders by assessing the property in the county at a very low value and by not having any money in the County Treasury. Finally in 1908, at the time I was employed to represent the County, Tatlow and Mitchell, an outstanding firm of lawyers at Springfield, Missouri, brought a suit in the United States District Court at Hannibal, before Judge David P. (Pat) Dyer, to compel the State Board of Equalization of Missouri

and the County Board of Equalization of Macon County to assess the property of Macon County at its true value in money, as provided by the Missouri Constitution. We all realized that this was a very dangerous suit and I took several months to prepare for trial. When the case was tried before Judge Dyer at Hannibal, he sustained the County in every particular and held that such suit was simply a suit against the State of Missouri and that it could not be maintained, as the State had not consented to be sued. He also held that Mandamus would not lie against the Governor of the State of Missouri and could not be used to coerce a State Officer vested with a discretion. We were very much elated and the bondholders were downcast but they appealed to the United States Circuit Court of Appeals at St. Louis. I argued the case there and much to our surprise that Court held with the bondholders and against the County and gave the bondholders everything they asked for. We informed the Court that it would practically confiscate the property of Macon County to pay this enormous debt with the accumulated interest, and the Court thereupon appointed a Special Master to investigate the finances of the County and its method of doing business. Testimony was taken and it was found that the County had been improperly juggling its funds for the purpose of defeating the bondholders. It was then suggested that the County could well pay $500,000 or more to allow the judges to fix the amount which the County should pay. The debt with interest at that time amounted to nearly three million dollars. The judges suggested that $750,000 would be a fair amount for

Macon County to pay and wipe out the entire indebtedness, both principal and interest. The County Court thereupon submitted its offer to the voters of the County, and 3,649 votes were cast for the settlement and only 798 against it. Refunding bonds were issued, and in 1929, the County paid the last of this dishonest indebtedness and the bonds were burned in the Courthouse yard.

During the Missouri and Mississippi Railroad Litigation trial, Judge David P. (Pat) Dyer told this story about President Abraham Lincoln. He was a Colonel in the Federal Army and after Appomattox went through Washington on his way to Missouri. His Uncle, John B. Henderson, was a United States Senator from Missouri, and he called on him at his office in Washington. He suggested to his Uncle that as the war was over and as he was returning to Missouri, it would help him very much in later life if he had a Commission as a Brigadier General. Senator Henderson suggested that as he knew President Lincoln very well and had practiced law with him in the Illinois country, he would take his nephew, Colonel Pat Dyer, over to see President Lincoln and request his promotion. They easily obtained an entrance to the President's office and after introducing his nephew, Senator Henderson said, "Abe, Pat here is going back to Louisiana, Missouri, to practice law, and now that the war is over, and he can't hurt anyone, I would like for him to have a promotion as Brigadier General, because it will help him in his future political life in Missouri." Lincoln said, "Dyer, Dyer. We had a family in Illinois named Dyer, and when I was representing

the Illinois Central Railroad and obtaining right-of-way for the Railroad, we concluded to build a depot on some land owned by this Dyer. Mr. Dyer was perfectly willing for the Railroad and shops to be located on his land, and agreed to give us the land free of charge if we would do so. It was all agreed to but the question arose as to what the town should be called. One man suggested that it be called Dyer. Another thought it should be Dyersville. Another thought it should be Dyersburg, and finally one old man in the crowd said, 'Lets call it Diarrhea'." Whereupon both Senator Henderson and Colonel Pat Dyer broke out in a loud laugh and while they were laughing, President Lincoln led them to the door and ushered them into the hall. Judge Dyer told me that that was how close he came to being a General.

After the Civil War, the Federal soldiers organized the G.A.R., an organization somewhat like the American Legion. Every community had a lodge. The Elmer Lodge, just west of La Plata, held a four-day reunion in August each year, and made quite an occasion out of it. Concessions were sold, dancing pavilions were provided, and the grounds looked like a modern carnival. A great crowd usually attended, for no admission was charged, and political speakers were secured for the afternoon and evening.

But in all good, there is some evil, and at one of these reunions, a man named McHenry proved the truth of the statement. While innocently walking behind the shooting gallery, he was hit by a stray bullet. The woman behind the gun evidently was a poor judge of distance, and missed her mark. McHenry lost no

time in suing the leading members of the G.A.R. for not providing a sufficiently wide barrier to take care of such discrepancies in the marksmanship of their customers. The jury felt as he did about the matter, returned a verdict in his favor, and he was paid for his pain and embarassment.

Claude H. Lyons, a real estate man at La Plata, moved to Kansas City in 1909. Shortly thereafter, while riding with his brother-in-law in a buggy, he was struck by a streetcar at 5th and Haskell Avenue, Kansas City, Kansas. I filed a suit for him in Kansas City against the street car company, and recovered a judgment for $17,500. Because of a building close to the car track, a person in a buggy could not see the streetcar until the vehicle was practically on the track. The motorman testified that he saw the horse's head when it was within eight feet of the track, but that the man in the buggy could not see the car. He further said that he did not know they intended to cross the track, and gave no signals until just before the collision. The horse and buggy were dragged about forty feet before the car stopped, and Lyons was severely injured. The case was hotly contested, and after the verdict, the company appealed the case to the Supreme Court of Missouri. John H. Lucas, of Kansas City, appeared for the streetcar company, and I argued the case for Lyons. The judgment was affirmed, but a remittitur of $7,500.00 ordered, so that Lyons finally received $10,000.00 and interest.

For several years, I acted as local attorney in my county for the Atchison, Topeka and Santa Fe Railway Company. I finally gave it up, after deciding that it

did not pay. Country lawyers were given passes by the Railroad, plus a small per diem when in court, and seldom made enough money to take care of their traveling expenses while riding on a pass. Lawyers in small communities are paid practically nothing for their services in representing railroads. Of course, the railroads usually select the most successful lawyers to represent them, because they cannot then sue them. The passes which such lawyers have are only good on a few trains, so if speedy passage from one place to another is necessary, one must buy his own ticket.

Shortly after retiring from the Santa Fe, I filed a suit at La Plata for Mr. and Mrs. J. L. Bumps for the death of their one-year-old child, who, they claimed, died from pneumonia, occasioned by the mother and child sitting in an unheated waiting room at Bucklin, Missouri. A pane of glass in one of the windows was out, there was no fire, and the room was uncomfortable. The mother requested the agent to build a fire, as the baby was cold. The agent refused, explaining that he could not build a fire until a certain date. Some thirty days later, the child died, and suit was instituted on the theory that the baby contracted a cold in the chilled depot, and as a result died.

The railroad at first announced that it would litigate the matter, because the weather was not cold enough to cause pneumonia, but later Mr. J. D. M. Hamilton of Topeka, Kansas, General Claims Attorney of the Railroad, came to my office in La Plata. After a short discussion, we settled the case for $5,000.00. Mr. Hamilton was the father of J. D. M. Hamilton who promoted the candidacy of Alf M. Landon for President

in 1936, and acted as Chairman of the Republican National Committee.

In 1907, Frank P. Galpin was selling sewing machines throughout rural Macon County. Badly crippled from infantile paralysis, he had a specially built wagon and drove two horses. Early that year, while driving south of La Plata, and paralleling the Wabash Railroad Company's track, a freight train came up behind him and sounded a whistle for a crossing. Galpin's team became frightened, and before he could quiet the horses, the engineer gave several sharp blasts of the whistle. This further excited them, and they ran away, turning the wagon over and injuring Galpin. Evidently, the engineer wanted to have some fun, but failed to see the seriousness of the situation.

I was employed by Mr. Galpin, and filed a suit for $5,000 damages to his person and property. The railroad company took a change of venue, and the case was sent to Macon, the county seat, to be tried. It was defended by Guthrie and Franklin, local attorneys for the railroad, and very able lawyers. They claimed that only the usual and ordinary crossing whistles were blown, and that the railroad was not liable for frightening horses from such signals. In fact, they insisted that the railroad was required by law to sound such signals, and was not responsible for any damages resulting therefrom.

During the trial, Mr. Galpin, badly crippled and stooped, would walk across the room to the water cooler for a drink. The jury was of the opinion that his crippled condition was caused entirely by the injuries received when his wagon turned over. The lawyers for

the railroad company did not ask him anything about his crippled condition prior to the injury, and I did not think it necessary to do so. It was solely a question of whether or not the engineer had unnecessarily blown the whistle with a mischievous idea of frightening the team, or whether only the usual and ordinary crossing whistles were blown. The jury found for Mr. Galpin and against the railroad company in the sum of $4,000. The case was appealed, but before it was reached for argument in the Appellate Court, was settled and Galpin received his money.

On December 13, 1908, elderly George Schupp was walking west on one of two parallel Wabash Railroad tracks near the city limits of Brunswick. It wasn't a walk for exercise, nor yet a walk merely to inspect the beauties of nature. He was picking up coal and putting it in a wheelbarrow to be taken to his son's home where it was to be used for fuel. This was a practice which the railroad allowed its employees. On this particular Sunday morning, Mr. Schupp leisurely went about his task, and as he walked westward, picking up a bit of coal here and there, an eastbound passenger train puffed toward him. Without attempting to slacken speed, and without giving a signal of any kind, the train ran over Mr. Schupp, and he was killed instantly.

The Schupp family formerly had lived in La Plata, and the widow employed me to bring a suit against the company for Mr. Schupp's death. The engineer testified that Schupp was going west on the north track, and when the train approached, he became confused, hauling his wheelbarrow over on the south track on

which the train was proceeding. It was there that he was struck and killed. The engineer further testified that he had no idea that Mr. Schupp was going to get in the way of the train and that he had no time to warn him or to try to stop the train.

Mr. and Mrs. Shepherd owned a home about three-fourths of a mile away from the scene of the accident. It was situated on a hill, elevated about 300 feet above the tracks. Both of them testified that they saw the approaching train from the time it left DeWitt, seven miles west of Brunswick, and that during that time they observed Mr. Schupp on the south track walking westward, stooping occasionally. They added that when the train came over the bridge west of Mr. Schupp, he was in the middle of the track, and never left the track until the train struck him.

The case was tried on what is called the humanitarian theory. If Mr. Schupp was on the track in a position of peril, and if he was oblivious to his peril, and the railroad saw, or could have seen the danger, the railroad should have given him a warning so he could leave the tracks. If he failed to heed the warning, the railroad was responsible for stopping the train, so that he would not be injured.

The case was tried at Salisbury, Missouri, on change of venue, and a judgment was awarded for $6,000. The maximum amount which could have been recovered was $10,000. The case was appealed to the Kansas City Court of Appeals, and Judge Broaddus, a distinguished judge of the court, handed down an opinion reversing the judgment outright. He held that there was no credible testimony to show that Schupp was on the south

track, unaware of his peril, for a sufficient length of time for the engineer to discover such peril. He further held that the testimony of Mr. and Mrs. Shepherd, who were three-quarters of a mile away, was incredible, because they could not have recognized a man at that distance, and could not have told upon which track he was. In other words, the court substituted its vision, or its judgment, for that of the two Shepherds, and being the only witnesses to see the accident, it was impossible to proceed further. Mrs. Schupp did not receive one dollar for the death of her husband.

In 1909, a crew of men were working just south of La Plata, Missouri, removing "angle bars" or "Fish plates" from the sides of the rails composing the Wabash Railroad Company track from St. Louis to St. Paul. These plates hold the rails, and were fastened by bolts and nuts. The bolts could be removed in two ways; one, by knocking off the end of the bolt which had the nut on it, with a large hammer; the other, by using a chisel and hammer to cut off, or split, the nut and drive the bolt out. Philip Prash was a section man working with the crew on the gate at the edge of the right-of-way. A fellow worker named Thomas, was using a hammer to knock off the end of a bolt. He had struck it several times without breaking it, when the foreman directed Prash to go to his assistance. Prash immediately did as he was told. There was a handcar a few feet along in the direction Thomas was striking. This car contained the tools which the men used. Prash started for the car, intending to get a chisel. As he passed Thomas, he asked him to quit striking until the chisel could be secured from the handcar.

Thomas immediately stopped, Prash got the chisel, and was returning when the bolt was struck once again. The nut flew off, and struck Prash in the face with great force, inflicting painful and permanent injuries.

The law in Missouri states that a corporation is liable for the negligence of a fellow servant while engaged in work of this kind. Hence, a suit was instituted in La Plata against the Wabash Railroad to recover damages. The railroad defended on the theory that as Thomas was somewhat deaf, and Prash knew it, it was negligence on the part of Prash to go to the car without knowing whether or not Thomas understood him.

The jury found that Thomas must have understood the order, because he ceased striking for a while. The judgment was appealed to the Kansas City Court of Appeals, was affirmed, and Prash received his money.

In varying tempos, increasingly and steadily, there come before our Courts for settlement these multifarious conflicts of interests between all kinds and conditions of men and women. To fairly resolve these matters is a high and difficult calling.

X

WARRENTON TRAIN WRECK—HENRY CLAY DEAN—THE HYDES OF PRINCETON

In 1904, the World's Fair was held in St. Louis. In September of that year about fifty residents of La Plata and vicinity took a car set apart for them on the Wabash Railroad to go to the Fair. About a hundred miles from St. Louis, near Warrenton, the train was derailed because of a defective track. The La Plata coach was thrown down a steep embankment, killing several of the passengers and injuring practically all of the others. I knew most of them, some of them were my closest friends, and as a consequence I was employed to represent practically all of them in damage suits against the railroad company. The railroad sent former State Senator Charles E. Peers of Warrenton to La Plata to adjust these cases. We tried many of them, in all of which verdicts were secured for the plaintiffs. Those which were not tried were settled out of court. Many of the people injured built new homes in La Plata with the money which they had received from their lawsuits. It is not hard, therefore, to understand why the street upon which many of these homes were located was often referred to as "Wabash

Avenue." My fees were contingent on a recovery, and were very large for that day.

In 1905 I argued my first case in the Supreme Court of Missouri. A man named Ayres took a walk along the Wabash Railroad tracks one afternoon. There is nothing unusual about such a pastime as that, but unfortunately Mr. Ayres had made the mistake of enjoying more worldly pleasures earlier in the day, and as a consequence was slightly intoxicated. It was not surprising that he became somewhat tired and decided to rest. He lay down upon the railroad track and went to sleep. A train came along, ran over him and injured him. I brought suit against the railroad, based upon the humanitarian doctrine which in this case, would mean that even though Ayres was intoxicated, if the engineer saw him on the track or by the exercise of the highest degree of caution should have seen him, he should have stopped the train. There were no witnesses to the accident, and the Circuit Judge directed a verdict for the railroad company. I appealed the case to the Supreme Court and went down to Jefferson City to argue it. Mr. James L. Minnis, formerly of Carrollton but at that time of St. Louis, was general counsel for the railroad company. The Court sustained the trial judge on the theory that there was no evidence that the engineer saw, or could have seen Ayres lying on the track.

Among the most interesting characters in northeast Missouri from the time of the end of the Civil War until the end of the century, was Henry Clay Dean, who lived in Putnam County near the Iowa Line. He was elected Chaplain of the United States Senate in 1855.

Later, he moved to southern Iowa and was there throughout the Civil War. Because he was an unreconstructed rebel he was in trouble with the Federal officials and soldiers all during the war. He was arrested numerous times for making treasonable speeches but was always quickly released. He was an outstanding criminal lawyer and tried many cases in Iowa and Missouri. He moved to Putnam County at the close of the war and for many years thereafter enjoyed a wide law practice. He called his home "Rebel's Cove." He had a very large library and had many books autographed "Henry Clay." This led many people to say that he was the son of Henry Clay of Kentucky. This made him very angry.

While Clay was uniformly good in the practice of law his particularly strong point was addressing a jury. He was frequently employed simply to make the closing argument in a lawsuit. He would sit throughout the case and listen to the evidence, then make his speech. He was said to be practically irresistible.

Judge Ellison told me that one day he decided to play a joke on Dean. He appointed him to represent a notorious horse thief who had been caught with the stolen horse in his possession. Dean did not appreciate this appointment inasmuch as there was no fee for him in it. However, when Judge Ellison told him to take his client into a room of the court house and give him the best advice of which he was capable, Dean did so. A considerable period of time elapsed after which Judge Ellison told the sheriff to go and tell Dean to come back to court. When the Sheriff went into the room he found Dean reading a news-

paper but the horse thief had disappeared. Dean returned to the court room with the Sheriff and when the court asked him where his client was, Dean replied that the court had told him to give his client the best advice he could. Dean said that after finding out all of the facts in the case, he told his client that the best thing for him to do was to climb out of the window, catch the first horse that he could find, and get out of the county. Dean solemnly advised the court that he felt that this was the best possible advice that he could give his client. The court was temporarily quite angry with Dean, and very nearly fined him for contempt of court but did not do so.

Among the people who came west in the early days of this country were Ira B. Hyde and Hobart G. Orton. These two young men were students and friends in Oberlin College before the Civil War. When Hyde left Oberlin he went to St. Paul, Minnesota, where he studied for a time in a law office there. He was admitted to the practice in 1861 but shortly thereafter, he joined the tide of young men who poured their lives and fortunes into the cause of the Union. He joined the Minnesota Mounted Rangers, but while his regiment was training, the Sioux Indians over-ran a large part of Minnesota and his regiment was diverted to repel this western invasion of the aborigines. For three years he was engaged in fighting these people throughout the badland countries of the Dakotas and west into Yellowstone Park. By the time the Indians were rounded up and captured, the war in the south was nearly over.

In the meanwhile Orton had enlisted in an Ohio infantry regiment which went into West Virginia. Orton

was badly wounded in the very first battle in which he was engaged. His hip was shattered and he was a cripple for the remainder of his long life. He was discharged from the army as unfit for further service and went to Michigan University where he went through law school.

In the winter of 1864 these young men met accidentally in Washington, D. C. They decided to enter a partenership, which they did, and practiced law in that city for a little more than a year. Early in 1866 Orton went west to pick a new location. At this time, north Missouri was in the process of being opened up for settlement and expansion because of the Hannibal and St. Joseph Railroad which had recently gone into operation in that section of the state. He went first to Chillicothe and from there went north on the stage. After looking over several county seats, he decided to locate in Princeton. He wrote his partner about his decision. Hyde came out in time to participate in the April term of the Circuit Court of Mercer County, where he actively engaged in the practice for the following sixty years. The last trial in which he participated, with his son Laurence M. Hyde, was in the April term 1926, where he made the closing argument to the jury in a will contest case, which he won. One of his sons, Arthur M. Hyde, was Governor of Missouri, and was also in President Hoover's Cabinet for four years as Secretary of Agriculture. Another son, Laurence M. Hyde, is a Supreme Court Judge in Missouri.

XI

SPEAKER OF THE HOUSE AND ATTORNEY GENERAL

In 1910, I was again a candidate for representative, and was re-elected. Knowing that I was practically assured of the Speakership, I made preparations to assume that position before going to Jefferson City. I, of course, knew all of the old members, and I made a very careful study of those who had been newly elected. I therefore prepared my committees before the session opened, and immediately upon being elected, I read my committee appointments from the platform. In previous sessions, this had usually not been done for ten days or two weeks, following the opening of the session. I assumed the Speakership, with one of my objectives being to close the session within the 70-day limit, something which had never been done before. From the expedition with which the work began, I am certain that this would have been accomplished but for the fact that the State Capitol burned in February, and about ten days were lost in securing new quarters. Even with this delay, however, we adjourned only five days after the closing date.

When I was Speaker of the House of Representatives in 1911 I caused my Appropriation Committee to

give Missouri University its first million-dollar appropriation. I told the Board of Curators and the President of the institution to stay at home and I would take care of them. Years later, in 1937, I believe, the University changed its by-laws and made me its first honorary alumnus. At about the same time I was also made an honorary member of the legal fraternity, Phi Delta Phi. I have been on the Missouri University Law School Foundation for many years, and have been able to assist a number of athletes who wanted to attend that institution. My own daughter went to this fine school for five years and I feel very closely connected with it and entertain a deep affection for it.

During this session, Governor Hadley informed me one day that he had received a notice from the Appropriation Committee, which I had appointed, to appear before it and explain his request for upkeep of the mansion and his office. I immediately informed him that no Governor should ever be asked to appear and explain his requests, but that he should be given whatever he asked for along these lines, inasmuch as he was the head of the State Government and responsible to the people. I caused the Chairman of the Committee to withdraw the notice, and the Governor was given the sums that he had requested. Some time later, in gratitude for my assistance, he told me that if I had any trouble with the Republicans in the House, he would straighten them out, and that if he had any trouble with the Democrats, he wanted me to straighten them out. As a consequence of this agreement, we worked very harmoniously throughout the session. Governor Herbert Hadley was one of Missouri's greatest

Governors and an exceedingly able man. He was seriously considered for the nomination for President by the Republican Convention of Chicago in 1912, where he was Teddy Roosevelt's floor leader, and in my opinion, would have undoubtedly received it and would have been elected President, had Roosevelt accepted Taft's proposal. After his term of Governor, he moved to Colorado, and later came back to Missouri, to be Chancellor of Washington University. After a short period there, he died, and was brought back to Jefferson City for burial.

Early in 1911, I went to St. Louis with several members of the Legislature. We stayed at the Planters Hotel, famous in Missouri history; there, one evening, I was introduced to Joseph G. Cannon, better known as Uncle Joe Cannon, of Danville, Illinois, then Speaker of the National House of Representatives. He was in a room with David R. Francis, former Governor of Missouri, former member of Grover Cleveland's cabinet, and later, Ambassador to Russia; John T. Heard, former Congressman from Sedalia; John Cosgrove, former Congressman from Boonville; Sam B. Cook, former Secretary of State; and Morton Jourdan, the outstanding corporation lawyer in eastern Missouri. They were playing poker and I was invited to join them, which I did. I was given a stack of chips and was somewhat perturbed to find that they were worth $500. Luck being with me, I stayed even with the board for an hour and then thought that I wanted to play one hand with "Uncle Joe" before I quit. When he opened the pot and my turn came, I raised $25. Governor Francis stayed in the game until Uncle Joe

raised me $25, then threw in his hand. I immediately raised Uncle Joe $25, and he called. He asked for, and received, two cards. I thought this showed that he had three of a kind. I had two pairs, queens and sixes, so acted as if I were going to draw one card, then stood pat. Uncle Joe naturally checked to a pat hand and I bet $50. He played with his chips for several minutes and spoke to Governor Francis, saying, "If I was in Washington, I would know what to do. When Ollie James raises me, I always raise him right back, and I think I will do so now." Rather reluctantly he put his chips in the pot but kept his fingers on them. Finally, after many minutes, he laid his hand down. Three tens lay face up on the table. I immediately spread my hand, showing the queens and sixes. There was general laughter, and Uncle Joe said he never expected anything like that from a Missourian. He enjoyed the poke even at his own expense, for I met him many times thereafter, when Champ Clark was Speaker, and he always recalled how he laid down three Tens to Queens and Sixes.

The session of 1911 was a very hard working one. During my three terms in the Legislature, I was fortunate in serving with some of the most able lawyers in Missouri. William J. Stone was United States Senator during all of those years, and James A. Reed of Kansas City was elected by the Legislature at the session during which I was Speaker. Later, of course, United States Senators were elected by direct vote of the people. Stone and Reed were both extremely able men and at that time, Missouri's representation in the

Senate certainly compared favorably with that of any other state.

In 1902, Stone was elected to the United States Senate and was the first ex-Governor of the state to be elected to another office. During the first World War, he was chairman of the powerful Foreign Relations Committee of the Senate, and voted against a declaration of war against Germany. He was bitterly opposed to war, and thought that nations should adjust differences as individuals do. After war was declared, however, he voted for every bill to aid in its prosecution, and of course his loyalty was never questioned. He died in April, before the war ended, a great American and one of the nation's greatest senators.

Whether or not Senator Stone would have supported President Wilson in his fight for a league of nations, I do not know. His colleague, James A. Reed, the junior Senator from Missouri, fought it bitterly, and along with Senators Lodge of Massachusetts, Johnson of California, and Wheeler of Montana, is given credit for keeping the United States out of it. Whether the League would have prevented World War II, I do not know. I once heard Newton D. Baker, President Wilson's very able Secretary of War, say that he thought the League would have worked, but that he did not know. Illustrating, he told how, on one occasion, he was looking at the pyramids in Egypt, and turning to the guide, asked, "How old are the pyramids?" The guide shook his head and answered, "Only Allah knows."

President Wilson had been made to believe that the German people as a whole were good people, and that

only a few men, like the Kaiser, were bad. He was unable to analyze German propaganda and no sooner was World War I over than Germany began to prepare for World War II. To a great extent, the United States financed such preparations.

Such mistakes should be avoided in the future, because all evidence points to the fact that Germany intends to begin another World War as soon as the people can prepare. There will never be any peace in the world until Germany is destroyed. The German nation should cease to exist, and the territory should be cut up into small countries. Germany came close to owning the world twice, and will certainly and surely try again.

The United States will be wary of entering an alliance with seventy or eighty nations to regulate the life and habits of all of the people in the world. The five large powers can prevent future wars by joining together for that purpose. If nothing more than that grows from the next Peace Conference, it will be worth all it has cost. Too, if the Allied powers make certain that there is no immigration from the Axis nations for at least a generation, and that Germany is policed for at least one generation, chances for a permanent peace will be far greater than ever before.

When men prepare for war through military schools or reserve training, they become professional soldiers and commissioned officers. To them, war is simply a game. If they win, they are heroes. If they lose, they bide their time and fight again. Officers of a victorious army will see that officers of a defeated army are not punished. At some time, they may be captured themselves. When captured, they are not punished, as are

enlisted men. They are given private quarters, and are allowed to fraternize with officers of equal rank. Professional courtesy from one officer to another takes care of them.

Therefore, when commanding officers are punished as a matter of course for atrocities committed, such atrocities will cease. The Nuremberg trials have set the world a splendid example in this respect.

The greatest failure in history was the failure of the Versailles Peace Treaty, made by Wilson, Lloyd George, and Clemenceau. In less than twenty-five years, the defeated nation, Germany, was able to successfully challenge the whole world. Only the whole world defeated it. Certainly a peace treaty which left a conquered nation that powerful, was more than a failure; it was a calamity. The Allies should see to it that no loop-holes are left this time.

In 1912 I was elected Attorney General of Missouri, after a very hardy primary fight. I canvassed in every county in the state and made more than 300 speeches. In the general election I had two opponents. One was James W. Mason, of Springfield, who was the Republican nominee; the other was Arthur M. Hyde, of Trenton, who ran on the Bull Moose Ticket. Hyde was later Governor of Missouri and Secretary of Agriculture under President Hoover. Due to the division between William Howard Taft and Theodore Roosevelt the Democratic ticket in Missouri was easily elected In this election Elliott W. Major was elected Governor after a brilliant four years administration as Attorney General. He succeeded Herbert S. Hadley. While at the time I did not realize it, I was bidding farewell

to my home and friends in La Plata. At this time, however, I expected to return there and resume my practice when my term as Attorney General was over. I therefore looked about to find some capable man to place in my office there and finally selected Paul P. Prosser, of Fayette, who proved to be one of the most brilliant men and able speakers that Missouri ever produced. He later moved to Colorado where he became Attorney General of that state. He would undoubtedly have gone to the United States Senate had he not died at a regrettably early age.

The making of a state campaign was to me a unique experience. It involved a great deal of travel, much of which in 1912 was done by rather primitive means and under conditions which were far from comfortable. However, it offered many compensations. One of these was an unequalled opportunity to see and to know all parts of this state of Missouri, and to meet representative groups of people from all parts of it. Another was the contacts made and the friendships begun with many of the finest and most interesting men and women in the state. On at least one occasion during my campaign for Attorney General, I had a rather hazardous experience. The State Committee instructed me to go to Buffalo to speak. This is a small inland town in the heart of the Ozark Mountains. I was to be met at Lebanon by a Mr. Donnelly, who was to drive me to my destination. This part of Missouri is unequalled in beauty and is replete with interesting historical associations. Lebanon was the home of the well loved and widely known novelist, Harold Bell Wright. It was here that he gleaned the inspiration for such

stories as "The Shepherd of the Hills," and that he preached his philosophy of the power of kindness and love. The Ozark region has produced many such men.

Mr. Donnelly was there at the appointed time; he escorted Mr. E. P. Deal, candidate for Treasurer, and me to a Model T Ford car, graciously settled us for the ride, and drove us to Buffalo. A large crowd of mountain Democrats had gathered, some of them coming from miles around on horseback. The audience was a very appreciative one, and the meeting was very successful. But sometimes a good beginning brings on a bad ending, and vice versa. The trip back was not quite so successful. Mr. Donnelly was a good Democrat and the carry-over of enthusiasm from the meeting proved disastrous to his driving. While going down a steep mountain grade, the car was overturned and the three of us were thrown out on the rock road. I was considerably scratched up but came out of the ordeal none the worse, except for torn clothing. However, Donnelly and Deal did not fare so well. We were taken to the hospital at Lebanon by ambulance, and were soon patched up nicely. Mr. Donnelly, incidentally, was the father of the Governor of Missouri, Honorable Phil M. Donnelly. Governor Donnelly began his political career with the help of Thomas L. Rubey, for twenty years a member of Congress, who lived in Lebanon during Donnelly's youth. Many years before, in La Plata, Missouri, Congressman Rubey had started me on the road to politics.

I entered upon my duties as Attorney General on January 5, 1913. In addition to my four regular assistants I was extremely fortunate in being able to employ

a number of young men to handle criminal cases in the Supreme Court. Ernest Tipton is a Judge of the Missouri Supreme Court. C. P. Lemire is a Judge of the U. S. Tax Court. J. V. Billings is a Judge in southeast Missouri. Kenneth C. Sears has long been a member of the faculty of the Chicago University Law School, and James P. Kem, after a highly successful legal career, which included the successful investigation of the "Teapot Dome" case, is now a United States Senator from Missouri. With these splendid helpers I entered upon the duties of my office. For several reasons I was faced with a difficult situation. One of these was that my immediate predecessors in the office, Elliott W. Major and Herbert S. Hadley, had been men of outstanding brilliance and vigor. Hadley particularly had focused upon himself national attention through his valiant and successful attacks upon national trusts. I could foresee that to live up to such predecessors and to discharge the duties of this office in the manner to which the people of Missouri had become accustomed would call forth all of the ability and effort which I possessed. The office was a hard one at this time for the further reason that Hadley, while Attorney General, had instituted suits against the Standard Oil Company, the International Harvester Company, and all of the large packing houses in America which did business in Missouri, for violation of the anti-trust laws. These suits had all been carried through Attorney General Major's term and I inherited all of them, including the Missouri maximum freight rate and two-cent passenger rate cases. In order to familiarize myself with these cases sufficiently well to cope with the

brilliant staffs of attorneys who represented these various defendants, and who had been on the cases since their institution, I had to do an immense amount of reading of the records of these cases which, since the time of their institution, had become voluminous indeed. In addition to these extraordinary and unusual matters, I had of course all of the routine business incident to the Attorney General's office which, alone, is usually considered enough to keep the Attorney General pretty constantly occupied.

I have mentioned that this was the era of "trust busting." I have also mentioned that Attorney General Hadley was in the very forefront of this movement and was nationally regarded as being one of the most outstanding men in this field. He was a very able lawyer as was Attorney General Major. Just about the time I became Attorney General in 1913, a decree of ouster had been rendered against the Standard Oil Company of Indiana, fining the company for violating the anti-trust laws, and ousting it from doing business in Missouri.

An application was pending allowing the company to pay the fine and to secure a suspension of ouster judgment, on the promise of good behaviour, and compliance with the Federal and Missouri Supreme Court decree to engage in competition. It had divided the state with other oil companies, as the nation was divided, and the Federal Court had decreed the dissolution of all Standard Oil Companies, and the Missouri Supreme Court decreed ouster in Missouri.

The Supreme Court of Missouri appointed a Commissioner, Honorable John Montgomery, of Sedalia,

to take testimony as to whether or not the Company was engaging in competition in Missouri. The Commissioner took testimony for more than a month in Chicago.

The Standard Oil Company was represented by A. D. Eddy, its general counsel for many years, and Robert W. Stewart, who had just gone to Chicago from South Dakota, as Assistant General Counsel. Mr. Stewart later became President of the Standard Oil Company of Indiana, and retired from office after a fight with the Rockefeller interests, involving a transaction he had in Canada with Harry Sinclair. He was a very able man and I predicted a brilliant future for him.

Mr. John H. Lucas and Frank Hagerman of Kansas City were assisting Mr. Eddy and Mr. Stewart in the hearing. They were two of Missouri's ablest lawyers. Mr. Lucas, besides being an able man, was one of the most interesting characters at the Missouri Bar. He had come from Osceola, Missouri, a small town in the Ozarks, to Kansas City forty years before, and rapidly went to the top of the Bar and represented most of the financial interests in this part of the country. He maintained his residence at Osceola, and every Saturday afternoon went down on the train and stayed until Sunday afternoon, teaching a Bible class Sunday morning. He registered from Osceola and always claimed to be a country lawyer. He would often go down to the court house in Kansas City with a small grip in his hand, would tell the jury he had just come up from Osceola and that he did not know much about city practice, as he had been here only once or twice, and that he would do the best he could. He always re-

mained in character, and never once admitted he was a shrewd city lawyer. He was one of the most delightful men I have ever known. Frank Hagerman was regarded as one of the great lawyers of the middle west. He, too, represented all of the great interests in that part of the country. We took testimony for more than a month in Chicago, and the company convinced the Commissioner that it had complied with the Federal and State decrees, and that it was then engaged in competition in Missouri. The Commissioner recommended that the judgment of ouster be suspended on good behaviour and the company has been doing business in Missouri ever since. I agreed with the Commissioner's finding.

The Legislature of 1913 placed all stock fire insurance companies doing business in Missouri under the anti-trust law. Before that they had all charged the same rate for fire insurance throughout the state. The act made the companies and the officers thereof liable for using a common rate book, and charging the same premium. The bill went through the Legislature without any objection and was signed by the Governor.

A short time thereafter all of the companies met in Philadelphia and Pittburgh and passed joint resolutions agreeing to withdraw from the state of Missouri on April 1st of that year and to cancel automatically every fire insurance policy in said state. This upset the state as it had never been upset before. Chambers of Commerce in all the large cities, encouraged by agents of the companies, passed resolutions criticizing the act and the Governor for signing it, and demanded that the officials make terms with the companies. The

state officials held several meetings with the companies and civic bodies but were unable to satisfy the companies and they announced they would pursue their plan of leaving the state and canceling all policies. Missouri policyholders had millions of dollars of fire insurance in force and the mutual and reciprocal companies would not have been able to carry it. Chaos would have been the result because people must have fire insurance on their property. Loans were made on property throughout the state conditioned that fire insurance be carried and such loans became due if insurance was not carried.

Nothing the state offered would satisfy the companies, and finally I instituted a quo warranto suit in the Supreme Court of Missouri against all of such companies, alleging a violation of the anti-trust laws, inasmuch as they were acting in concert under a common plan and scheme to ruin the state of Missouri; that they be fined for entering into such a concerted agreement, and as an incident thereto, an injunction be issued to restrain them from carrying out their agreement to leave the state and cancel policies by concerted action, until the Court could properly administer punishment. No injunction had ever been granted by that court because it was not expressly authorized by the Constitution. However, if the court did not issue an injunction, all of such companies would leave Missouri on April 1st and thereafter, of course, could not be punished.

The companies appeared with a formidable array of counsel, Honorable Frederick W. Lehman of St. Louis, former Solicitor General of the United States under Taft; Thomas Bates, general counsel of Chicago,

and other local counsel. The court allowed argument on the demurrer and handed down an opinion enjoining the companies from carrying out their agreement to leave the state and cancel policies.

It was evident that on final hearing the companies would be severely punished, and they asked for a conference, which was granted. They were told that if they would set aside their agreement and continue to do business in Missouri as they had in the past, all proceedings would be dismissed against them and no penalties would be inflicted; that the next Legislature would be asked to repeal the act, and a commission appointed by the Governor to prepare a rating act, such as several other states had, allowing the companies to maintain a rating bureau for the purpose of promulgating rates. The companies readily agreed and all litigation was dismissed and the next Legislature repealed the act and adopted a uniform rating act which is still in existence and all such companies now use a common rate.

Apparently the companies selected Missouri to demonstrate their strength, and had not the Supreme Court interfered, Missouri would have been in a deplorable condition. The people of a state cannot do without fire insurance, and the only companies sufficiently sound to write such insurance are the stock fire insurance companies. This was the first time the insurance companies had threatened a state, but it was not the last time. It is a dangerous weapon in the hands of fire insurance companies, and some legislation should be passed making it impossible for them to withdraw and leave a state. Had they acted singly and alone, they

could have accomplished the same result, but when they attempted to act in concert, they violated the anti-trust law.

Such companies have been defiant of the state's power to regulate them ever since, and during the last twenty years, there has been constant litigation with them. They have always lost, and at a tremendous expense. Missouri has always been fair with them and why they selected Missouri as the one state in which to fight, we have never known.

We now have the gratifying spectacle in Missouri of fire insurance companies operating under reasonable controls which permit them sufficient freedom for all of their legitimate operations, and at the same time, see the policyholders of Missouri protected against extortion and unfair practices. It is very gratifying to me to have had an active part in bringing this condition about.

While such litigation as I have discussed above is of great importance to people generally, it is not as interesting, perhaps, as some cases where the actions and difficulties of individuals are more emphasized. While I was Attorney General many criminal cases passed through the office. The following are a few which I particularly recall.

The scenery in the Ozark Mountains of Missouri is as beautiful as any scenery in the world. The people came from the mountains in Tennessee, Kentucky and North Carolina. They talk pure unadulterated English; they are clannish and suspicious of strangers. For years they watched for United States Marshalls as they made their corn whiskey. They fight among themselves but

when a stranger comes in, they join against him. Ed and Bill Conley were brothers and were typical of the people in Ozark County where they lived. One was a blacksmith and the other a farmer. One evening they attended a dance given by Jim Riley in his mountain cabin, together with another guest, "John Barleycorn," to whom they paid a lot of attention. Finally brother Ed said to brother Bill, "Bill Conley, I am a fighting s—of—a—b," whereupon Bill pulled his pistol and killed him. You can't talk that way in the Ozarks—they won't stand for a boaster. Bill was given ten years in the penitentiary but the Supreme Court of Missouri, after I had briefed and argued the case, reversed it for another trial because no instruction was given on manslaughter. It was never tried again. Judge John T. Moore, one of the real characters in the Ozarks, presided at the trial. He was a tall, handsome man with a long moustache and flowing red whiskers. He wore a long broadcloth coat and striped trousers, with a stiff white shirt and a silk top hat. Judge Moore was a butcher by trade at Ozark, and when business became bad, he left the butcher shop and opened a law office, where he was just as much a butcher as before.

Circuit Court at Ava, the county seat of Douglas County, Missouri, was also presided over by Judge John T. Moore. In November 1912 Emmet Yoeman, a native of the Ozarks, was teaching a country school a few miles from Ava. An entertainment was given at the school house and Linzy Bunyard, another native, attended after preparing himself with a bowie knife and a quart of corn whiskey. After the lunch baskets had been raffled off to the highest bidders, the entertain-

ment was started with two little girls singing, accompanied by the school teacher on the violin. Linzy did not like the song and demonstrated this fact by going up on the stage and commencing to sing himself. The school teacher attemped to put him off the stage whereupon Linzy drew his bowie knife and cut the teacher's nose off. That's another thing you can't do in the Ozarks so they indicted Linzy and upon a trial he was sentenced to five years in the penitentiary. The charge was mayhem, which means to maim or disfigure. I handled the case in the Supreme Court and it was affirmed, and Linzy served his sentence.

John Tatman and Samuel Sherman were two gentlemen known as "stickup" men. On the night of April 30, 1913, they stood in front of a drug store in Kansas City, Missouri, with a view of holding it up, but in looking in the window they saw a policeman in uniform, standing inside, so they concluded to take their business elsewhere. As they walked away, the policeman who had also seen them, thought he recognized them as wanted highwaymen, from a circular in his pocket describing them. He started to follow them and said, "Wait a minute boys, I want to see you." They stopped and he came up and took a revolver from the pocket of Tatman, who in turn took the policeman's pistol. Tatman turned the policeman's pistol on him and shot him five times, once through the face; once just below the navel; once just below the ribs on the right side; once through the back of the neck, and once in the back. The officer lived five days and then died. Tatman was sentenced to death by hanging. I handled

the case in the Supreme Court and it was affirmed and Tatman was hanged.

One of the cruellest and most unnecessary murders committed in Missouri, was committed by George Bonner on the afternoon of December 1, 1911, in Kansas City. Six men were working in the Missouri Pacific freight office when two Negroes came into the room with revolvers and said, "Get into the vault, and get in there quick." They went in the vault, but Albert Underwood was a little slow. George Bonner shot him down and the robbers took $136.75 in cash and $958.00 in checks. The only defense offered when arrested was, that the room was so dark that no one could have identified Bonner. There were six 16 candle-power incandescent lights burning in the office and after I had argued the case in the Supreme Court, that Court held that the room was light enough for identification, and affirmed the sentence of death and George Bonner was hanged.

The experience gained in the office of Attorney General is a very valuable one for any lawyer fortunate enough to fill that position. One gains a very broad experience in all types of cases and in all the phases of law as it is practiced in his state. What is equally valuable is the knowledge gained concerning human minds and emotions. There is also the extensive contact with nearly the whole Bar of the state which cannot be gained in any other position of which I know.

XII

FREIGHT AND PASSENGER RATE CASES

In the summer of 1913 I attended my first meeting of the National Attorney Generals Association at Charleston, South Carolina. This association was organized several years before by the Attorney Generals of the different states in order to exchange information and to render service to each other. Herbert S. Hadley of Missouri was its first president.

I was on the program at Charleston for an address on the fire insurance situation in Missouri. I there met most of the Attorney Generals and enjoyed the meeting very much. The next year the association met at Washington, D. C., and I was elected its president, and presided over its deliberations at San Francisco in 1915. It has accomplished a great deal of good, and still exists. I occasionally attend its meetings, which are now held with the American Bar Association.

About the first of 1914, I became involved in some litigation which lasted for several years and was highly complicated. It arose out of the maximum freight rate and two-cent passenger fare cases, occasioned by the legislators of 1905 having passed an act reducing freight rates and reducing passenger rates on railroads. The railroads generally had been in bad repute with the

people for many years and their earnings were thought excessive. Many of the midwestern states passed similar acts. The Missouri and Minnesota cases were the first to reach the Supreme Court of the United States. Upon the passage of this act in Missouri, the railroads went into the Federal Court at Kansas City, and secured an injunction against the officers of the state to prevent them from enforcing it. The injunction was readily granted and a $10,000.00 bond exacted by the court, from all of the railroads, and they proceeded to charge the higher rate during the litigation. Attorney General Hadley represented the state in the Federal District Court and the decision was in favor of the railroads, holding such acts unconstitutional because of being confiscatory. The same ruling was made in the lower court in the Minnesota case. Both states appealed to the Supreme Court of the United States and that court reversed both the district courts and held the railroads had not offered sufficient evidence to show confiscation and that such acts were, therefore, constitutional and valid.

The Missouri opinion was handed down early in 1914 and a short time thereafter I wrote the clerk of the Federal Court at Kansas City asking if the mandate from the Supreme Court of the United States had been filed in his court. He informed me that he had the mandate but that the Federal District Judge who had tried the case had instructed him not to file it. I made two or three trips to his office and demanded that he mark the mandate filed in order that I might proceed toward the collection of some twenty-five million dollars excess freight and passenger fares charged and col-

lected during the litigation and which were held by the railroads. Nothing could be done until the mandate was filed. The court had not made an impounding order but had allowed the railroads to collect and retain all excess charges and required them to refund these charges if the decision was adverse to them. The clerk told me he could not file the mandate without an order from the trial judge who had been brought in from another state, and that the resident judge had no authority to order it filed. I thereupon filed a motion in the Federal District Court asking an order of the court requiring the clerk to mark the mandate filed, in order that I could proceed. It took several months to induce the foreign judge to set the motion down for argument, which he finally did.

I came to Kansas City and appeared in court that morning and found that all the trunk line railroads in Missouri were represented by their general counsel, and in many instances by special counsel. It appeared a very simple matter to me but much to my amazement, the railroad lawyers, feeling secure of their control of the judge, insisted that it was solely a discretionary matter whether he allowed the mandate to be filed and that $10,000.00 was the measure of their liability because that was the amount of the bond filed.

The case had attracted a great deal of attention and the court room was crowded with lawyers, as the papers had stated I intended to attack the judge, and had a writ of habeas corpus in my pocket to protect myself, in case I was fined or sent to jail. This was untrue because I had no idea as to what would happen

but I had brought a stenographer with me to take down the arguments in case I needed protection.

It was apparent that the judge was sympathetic with the railroads and it was well known that he had never decided a case against them. During the heat of the argument I told Judge McPherson that it was a matter of common knowledge that the Federal District Courts were havens of rest for the railroads and that in Biblical times, there was a city of refuge where one was secure from further molestation; that the Federal District Courts in the middle west had become courts of refuge for the railroads and once they entered such courts, they were secure from any proceedings against them; that it was a matter of common knowledge that he had policed the railroads ever since he had been upon the bench and that he had become an ordinary policeman for the railroads. The judge was in no position to protect himself because everything I said could have been proven. The arguments lasted all day and finally the judge turned his back on the court room and I was required to address him in that position. He never once interrupted me, but the railroads lawyers were objecting throughout my remarks. After argument, the matter was taken under advisement by the judge who ultimately handed down a decision ordering the mandate filed and holding the railroads liable for the amount of money which they had wrongfully collected from shippers and passengers.

The regular District Judge in Kansas City at that time was John F. Phillips, who, while a brilliant lawyer, and one of the greatest orators in Missouri, was wholly unfitted to sit as a trial judge. He was very autocratic

in his dealings with lawyers and litigants, to such an extent indeed that one of the greatest lawyers in the city would not go into his court at any time, and several others would not rise when he came upon the bench. His sympathies and findings were always in favor of the corporations. Phillips did not try the Missouri rate cases against the railroads but called in a District Judge from Iowa, as he frequently did. This judge was of the same pattern and mould, and it was impossible for an individual to secure justice in his court. They both accepted favors from the railroads as did many of the judges in the middle west during the Eighties and Nineties. This caused the people to have little respect for Federal District Courts in that part of the country. The judges succeeding them were exceedingly well thought of, and people now have a feeling of respect for Federal Courts.

I instituted separate suits against each of the railroads in Missouri upon behalf of the state, asking the appointment of a Commissioner to determine how much in excess freight and passenger rates they had collected, and to require them to pay this sum into court for distribution to the persons from whom the money had been wrongfully collected. Several of these cases were removed to the Federal Court but they were always remanded, because the state was the real party in interest and was entitled to sue in its own courts.

The first case reached the Supreme Court of Missouri, our highest court, and was extensively briefed and argued, and that court handed down an opinion holding that the state had no right to proceed for the collection of excess freight and passenger rates for indi-

vidual shippers and passengers, but that each individual shipper and passenger must represent himself and sue for himself. Inasmuch as there were literally millions of these claims, it was a decisive defeat because no one shipper or passenger, except in a few instances, could afford to maintain a suit against the railroads.

Feeling as I did, that the decision of the Supreme Court of Missouri was wrong and that the railroads should refund all excess freight and passenger rates collected during the life of the injunction, I concluded to ask the Supreme Court of the United States to allow the state of Missouri to institute a suit in that court to recover excess freight rates paid by the state on shipment of coal to one of its institutions at Chillicothe, Missouri. The Supreme Court of the United States has original jurisdiction where a state is the real party at interest. I thereupon prepared a simple petition against the Chicago, Burlington & Quincy Railroad Company to recover the sum of $850.00 for overcharges on such coal shipments, and went back to Washington and appeared in open court and asked leave to file such a petition requiring it to answer in that court. The Chief Justice asked me what kind of case it was and I told him. He wanted to know why I had filed a suit for an ordinary debt in that court, instead of filing it in a Missouri court. I told him that under the Compact and Treaty between the states as later embodied in the Constitution of the United States, the State of Missouri, when it entered the Union, reserved the right to proceed in the Supreme Court of the United States. The judges were very much disturbed at the thought of hearing a simple case of that

kind and suggested that I file the suit in Missouri court. I insisted that the State of Missouri had a right to a hearing in that court and the matter was taken under advisement, much to the apparent disgust of the court. In a few days, leave was granted the State of Missouri to file such suit and the railroad was served, and appeared in court and filed an answer, again pleading confiscation, which had been litigated in the main suit.

I asked and was granted leave to file a motion to strike out the plea of confiscation in its answer and the court in conference asked how I expected to try the suit in that court. I replied that the State had a constitutional right to enter that court, where it was a real party in interest, and that questions of fact, as to whether or not the railroad owed the state the money, could be heard by a jury. The judges seemed to think this suggestion ridiculous and said they had no authority to order a jury to try questions of fact in the Supreme Court of the United States. The motion was then set down for hearing, was fully briefed and argued, was sustained, and such plea of confiscation stricken out.

The railroad could then have filed an answer, denying that it owed the State of Missouri any money and the matter would have been heard by the court. How it would have proceeded, no one knows, although it was apparent that the court was very much disgusted at the thought of handling a suit involving such a small sum. Instead, the railroad refused to plead further, and judgment was rendered in favor of the State for the small amount involved, which the railroad paid. I think the railroad did this to relieve the court from

an embarrassing situation. However, this case established liability for all shippers and passengers who had paid excess rates during the injunction, and suits were thereupon filed against all of the railroads doing business in Missouri, and many millions of dollars collected.

During the argument, Justice Holmes stated that as his wife owned a $1,000.00 bond of the Northern Pacific Railroad Company, which in turn owned the stock of the Chicago, Burlington & Quincy Railroad Company, he felt he should disqualify himself; but both sides agreed that it would be all right for him to participate in the decision, which he did.

I always thought I should have won the suit in the Missouri courts, on the theory that when the railroads filed their suit in the Federal District Court for an injunction to prevent the reduced rates going into effect, they made the Attorney General of the state a party, and by enjoining him, tied the hands of all shippers and passengers, because they alleged the Attorney General was their representative. Having made the Attorney General the representative of all shippers and passengers for the purpose of enjoining the reduced rate from going into effect, I thought the Attorney General remained the representative of such shippers and passengers for the purpose of correcting the wrong which was done against them by virtue of his being enjoined. The opinion, in my judgment, was wrong, and many times since then, the representative of a class has been allowed to correct a wrong done the class.

However, a lawyer is not a lawyer in the true and highest sense of that word unless he learns early to accept with equanamity the verdict of court and jury

in matters which he litigates before them. From a long and extensive practice which has been before many judges and many juries in courts of original jurisdiction, and in all of the successive appellate courts, including the Supreme Court of the United States, I have come to the very certain conclusion that in the great majority of cases substantial justice is done in the legal processes of this country.

The Attorney General, during my term of office, was a member of the State Prison Board, along with the State Auditor and the State Treasurer. We managed the penitentiary which, at that time, had about 2,500 inmates.

One of the most publicized prisoners there was "Lord Barrington" who was charged with killing James P. McCann in St. Louis County on the 18th day of June, 1903. McCann owned race horses and ran them throughout the country. In 1903, just before the St. Louis World's Fair, he became interested in an Englishman known as "Lord Barrington." Barrington appeared in St. Louis that year and married a prominent lady who had him arrested and incarcerated in the City Jail for failure to support her. Upon his release, he was employed in a saloon on Broadway, called the "Lord Barrington Saloon." The place was filled every day by people wanting to see an English Lord.

McCann met him and invited him to live at his home, which he did. McCann and Barrington made frequent trips to resorts in St. Louis County and one day McCann did not return. Later, a body was found in a pond, which was thought to be McCann. Barrington was arrested and charged with his murder.

The case attracted attention throughout the United States and England because Barrington claimed he was an English Lord, in this country on secret work for the English Government, and that he could not disclose his real identity. The sentiment at the trial was overwhelmingly against Barrington. He was convicted of murder in the first degree, and sentenced to ninety-nine years in the penitentiary. The judgment was affirmed by the Supreme Court and he was in the penitentiary many years, until he was finally paroled. He disappeared and has never been heard of since. This is still one of the greatest mysteries in Missouri.

He undoubtedly was an English subject and perhaps a member of the nobility because he did receive assistance from the English Government, but the true story of his life was never told. He applied for a parole many times, but it was thought he had not served a sufficient length of time. I always voted for a parole. He was one of the most interesting men I have ever known. I talked with him many times, but he would never discuss his early life, beyond saying that he was born in India, the son of an English nobleman who was in charge of the English army in India. The evidence was that McCann was killed, but many thought he disappeared for business or domestic reasons. It is to be hoped that some day the true story of "Lord Barrington" will be told, but until it is, the public will be divided as to his identity and his guilt.

Whether "Lord Barrington" was guilty or not I do not know, but I do know that his trial was a travesty on justice. Two of the greatest judges on the court dissented because of the unfairness of his trial. The news-

papers publicized him and intimated that he was a notorious English criminal. Just before his trial, a melodrama entitled "The Desperate Lord Barrington" was presented on the stage in St. Louis, with Barrington as the chief villain and McCann as his latest victim. According to the play, the defendant was guilty of murdering the real Lord Barrington before he came to America, besides marrying several women and committing another murder in this country before he landed in St. Louis. When he testified as a witness, he was asked about the commission of many other crimes in this country and England, and also about his incarceration in the city work house for refusing to support his wife. The counsel for the state exceeded all legitimate bounds and the defendant was pictured as a devil in these words:

> "In all candor and with due reverence, I wish to confess to you that during the progress of this trial, my conception of the devil has been materially changed; and if I were to portray him to you now, I would not paint him as hoofed and horned, lurid with purgatorial fires, but rather would I picture him to you as arrayed in white vest and Prince Albert coat, with a voice as soft as the breath of summer and with a steel gray eye."

I know of only two other trials in America where public sentiment was arrayed against a man as it was in the Barrington case. Those two cases were the Frank case in Georgia, where a young Jew was convicted of murdering a woman employee, and the Hauptmann case

in New Jersey, where he was convicted of kidnapping and murdering the Lindbergh child.

These three cases, in my judgment, will always stand as a blot against the fairness of the American people. All three of them may have been guilty, but they were not accorded a trial within the meaning of the Constitution. They were the victims of a mob, the same as if they had been lynched, because not one of them had any chance, regardless of the facts.

XIII

HARVESTER COMPANY CASE—*QUO WARRANTO*—GOVERNORS MAJOR AND PAINTER—FELICE LYNE

I was admitted to practice in the Supreme Court of the United States in January 1913, a short time after I became Attorney General, I argued my first case in that court in 1914. It was the case of State of Missouri vs. International Harvester Company, for an alleged violation of the anti-trust laws of Missouri.

Attorney General Hadley had started a proceeding against this nationally known Harvester firm during his term of office. His successor, Attorney General Major, had presented the case to the Supreme Court of Missouri, it had decided against the Harvester Company and had fined it in the sum of $50,000.00 for violation of the anti-trust laws. The company had thereupon appealed to the Supreme Court of the United States. I briefed and argued the case in that court, where the judgment was affirmed. The attorney who argued the case for the Harvester Company was Edgar A. Bancroft, general counsel for the company in Chicago. He was one of the leading corporation lawyers in the middle west, and later was Ambassador to Japan.

Attorney General Hadley had instituted a suit in *quo*

warranto to oust and punish the large packing houses, Armour & Company, Swift & Company, and the Morris Company, for a violation of the anti-trust laws. It was alleged that they were acting in concert regarding the prices to be paid for products and that they also agreed as to the price to be paid by the consumers. A great deal of testimony was taken for several years by Attorney General Major, and at the beginning of my term of office, the Commissioner appointed by the Supreme Court of Missouri handed down a decision against the packers, ordering them ousted from the state, and assessed a fine of $125,000.00 against them. The case was thereupon taken to the Supreme Court of Missouri. I briefed and argued it there, and the judgment of the Commissioner was affirmed. Pending an appeal to the Supreme Court of the United States, the matter was adjusted and there has been no further trouble with them in Missouri.

Governor Major and Lieutenant Governor William R. Painter belonged to rival Democratic factions. The Governor seldom left the state, because in his absence the Lieutenant Governor would become the Governor. On one occasion, however, Governor Major left the state, the Lieutenant Governor called me the morning after, and, as I thought, in a joking way, asked me if he had the authority to remove a police commissioner. Not thinking that he had any such idea, I immediately told him that, as Governor, he could do anything. That afternoon he came to my office and told me that he had taken me at my word, and removed Dr. U. G. Crandall, Chairman of the Police Board of St. Joseph, Missouri,

an appointee of Governor Major, and a member of Governor Major's faction. He told me he wanted me to represent him personally and remove Crandall from office, as he had refused to abdicate.

I was naturally very much disturbed because I had not looked the matter up at all, and as there were three separate police acts in Missouri, one dealing with St. Joseph, one dealing with Kansas City, and one dealing with St. Louis, I knew they were all different and that removals could be made (a) "for cause," which meant a notice, trial and hearing, and (b) "at pleasure," which meant the pleasure of the appointing officer. The question, therefore, was what kind of removal statute was involved, and I proceeded immediately to investigate the matter and reached the conclusion that it was a very close question. At the Governor's insistence, however, I prepared and filed a *quo warranto* suit to oust Crandall, at St. Joseph, his residence. I could have filed the suit in the Supreme Court of Missouri, but concluded that it would be more fair to give him a trial in his own county. A prosecuting official has a great advantage in the trial of a criminal or quasi criminal case and I was willing for Crandall to have every advantage.

Thereupon all three of the local Circuit Judges in St. Joseph disqualified themselves because they knew too much about the case and I agreed with the attorneys for Crandall that they could name any Circuit Judge in Missouri, without consulting me, and we agreed on a date for trial and I proceeded to get ready. I had no idea who had been selected, and upon my arrival at St. Joseph the morning of the day set for the trial, I met in the hotel Judge Nat M. Shelton, of Macon, Missouri,

whom I have referred to before and whom I had grown up under. I was naturally surprised that Crandall's lawyers would pick a Circuit Judge from my old circuit, but Judge Shelton, as was his custom, immediately proceeded to tell me that he had spent all of the day before working in the library with Crandall's lawyers, and that he had concluded that I had no case; and that if he tried it, he would find against me and in favor of Crandall. He suggested also that if I wanted him to, he would disqualify himself and allow another judge to be called in. Knowing him as I did, and knowing that he would follow the law and the evidence, I immediately told him it would be satisfactory for him to try the case. He urged me to allow him to disqualify because of his views, but I refused. Thereupon we tried the case, and the whole town was present. At the conclusion of my testimony, which consisted simply of offering the record of removal, I closed for the state and thereupon Crandall's lawyers moved for a directed verdict in favor of their client. Judge Shelton was inclined to sustain them until I argued the matter and produced some cases which seemed to be in point. Thereupon, he immediately changed his views and rendered a judgment of ouster. An application was made to file a supersedeas bond pending the judgment of ouster in order that an appeal be taken to the Supreme Court.

I convinced the court that a judgment in *quo warranto* could not be superseded, and the attorneys for Crandall left with me that night for Jefferson City to perfect their appeal and secure a supersedeas order from the Supreme Court suspending the ouster, in order that Crandall might remain in office pending the appeal. We

had a hearing the next morning with the Supreme Court in chambers, and that court refused to suspend the ouster, and the case was set on the docket for argument. It was fully briefed and argued and a judgment was rendered, sustaining Judge Shelton and ousting Dr. Crandall from the office of Police Commissioner of St. Joseph.

In the winter of 1915, I was called to Philadelphia to handle quite another kind of case. Miss Felice Lyne, the Grand Opera singer, asked me to represent her in a suit against the Boston Grand Opera Company, for salary due her since joining the company the fall before. The company was touring the East under the management of the great Russian dancer, Pavlova, and she was being financed by a member of the Russian nobility, who was traveling with the company.

Felice Lyne was born in Missouri, but educated in Europe, studying voice under Marchesi and D'Aubigne in Paris. In 1912, she met Oscar Hammerstein, who became her manager and brought her to the United States. He had dreams of building a theatre for her in New York . . . to be called the "Felice Lyne Theatre." But his air castles crumbled while crossing the ocean on the way to New York. One day Hammerstein complained that Miss Lyne was not putting enough feeling into her singing. He further said that no woman could be a great singer without a man in her life, and suggested that she should get a lover. She became infuriated, struck him with her music score, and tore up his contract. Later, he sued her for his part of the money she earned in this country, but was unsuccessful.

Felice was a coloratura soprano, and all indications were that she was destined to be the world's greatest

singer. She made her debut at Convention Hall in Kansas City, in the winter of 1912. The hall was packed. Later, she toured all of the sizeable towns in Missouri, and in each town the audience overflowed the hall. In 1915, she joined the Boston Opera Company, and appeared with such artists as Ricardo Martin, Maggie Teyte and Baklanoff. She knew thirty-four operas from memory and, at Philadelphia, sang Gilda in "Rigoletto"; at New York, Marguerite in "Faust," and at Boston, Mimi in "La Boheme."

I stayed with the company all of one week while it appeared in Philadelphia, New York, and Boston. The company was experiencing the usual financial trouble and Pavlova was finding it difficult to meet the large payroll. The Russian nobleman was running short of money and the Russian Ballet which accompanied the Opera Company had not been paid. I had many conferences with Pavlova and the Russian Count that week, and finally effected a settlement for Miss Lyne at Boston. Pavlova was a great artist and was very easy to deal with. Miss Lyne admired her very much.

Shubert offered Miss Lyne a part in a musical comedy which he was opening on Broadway, at an enormous salary. Over the protests of her family and friends, she refused it because she thought it beneath the dignity of a Grand Opera singer to appear in musical comedy. She then joined the Quinlen Opera Company and toured South America with great success. Her greatest disappointment was her failure to make the Metropolitan Opera in New York. This caused her to be embittered toward the United States, and she left in 1916, returning only a short time before her death in 1940.

During those years, she sang in Covent Garden, London, for many seasons, and elsewhere throughout Europe.

To my mind, one of the greatest of the many privileges of being a lawyer is the opportunity which it affords to meet, upon intimate terms, all kinds and conditions of men and women and to obtain a deep insight into their minds and hearts. I feel that in my practice I have been more than ordinarily fortunate in this respect. My many associations with and observations of people at their moments of greatest strain, when their true character, with all the superficial amenities washed away, was revealed, has led me to the unshakable conclusion that the vast majority of men and women are fundamentally decent, strong, and fine.

XIV

TROOPING WITH CHAUTAUQUAS

In the early part of the winter during the first year of my term as Attorney General, I was approached by a representative of the White and Meyers Chautauqua Company with a proposal that I should lecture under their auspices the following summer. At this time, and for a good many years thereafter, the Chautauqua was one of the finest educational institutions in the United States. It operated largely in small rural towns remote from the cities, at a very moderate cost to the people who attended them. It brought much of the finest forensic, musical, and artistic talent in the United States to people who otherwise would have had no opportunity whatever to come in contact with such things. The Chautauqua usually remained in each town for seven days, during which time a varied program was presented. Meetings were held in large tents erected by the company, sufficient in size to accommodate many hundred people. The season was from about the middle of June until the first of September.

So eminent a position had this organization attained in the estimation of people, that the leading statesmen of this country were glad of an opportunity to speak from its platform. It had the additional advantage of

giving public men a splendid opportunity to express, unofficially, their views upon issues of public moment. William Jennings Bryan was undoubtedly the leading Chautauqua lecturer that the country had. There were many others, such as Jonathan P. Dollivar, the silver-tongued orator of Iowa; Honorable Champ Clark, Speaker of the House of Representatives; Richard Pearson Hobson; Governor Bob Taylor of Tennessee; Newell Dwight Hillis, who succeeded the great Henry Ward Beecher in Beecher's pastorate in Brooklyn; Frank W. Gunsaulus of the Armour Institute in Chicago; many Senators, Congressmen, Governors, ministers and professional men.

Making a Chautauqua circuit appeared to be an easy, pleasant way of spending a summer. Actually, it turned out to be extremely wearing. The speaker appeared, of course, in a different town each day. Some of these towns were close together and others were a considerable distance apart. In some cases railroad connections were direct and good, but much more frequently making the necessary trains involved arising at an unseemly hour in the morning, or of making the entire trip at night with perhaps two or three changes of train. It also involved eating in many restaurants where food was very bad and very poorly prepared and under conditions which were anything but pleasant. It further involved staying in a different hotel each night, a majority of which were decidedly old-fashioned, with poor beds, and rooms which in July and August were extremely hot. In addition to these things was the fact that there was absolutely no break for a lecturer from the time he started his circuit until he finished it. In-

deed Sunday was usually the biggest day for the Chautauqua and the talent performed on that day just as on every other.

In 1914, I opened my season on June 21st at Stoughton, Wisconsin, and delivered a lecture on each succeeding day until I closed at Unionville, Missouri, on August 29th. During the intervening period I had toured Wisconsin, Iowa, South Dakota, Kansas, Arkansas and Missouri. In 1915, I went over the big Redpath-Vawter circuit, covering the states of Ohio, Kentucky and West Virginia. We opened in Columbus and closed in Cleveland. I spoke in Huntington and Charleston, West Virginia, Ashland and Maysville, Kentucky, as well as in most of the big cities in these three states. My lecture subject that year was "Legal Reforms." In it, I discussed what I conceived to be necessary changes in legal procedure in order to facilitate the dispensing of justice. On Sundays this year I lectured on "Legal Proofs of the Resurrection." During the following three seasons I lectured on Chautauqua circuits covering the northwestern part of the United States.

However, while all of the hardships which I have mentioned were very real and were nearly all present most of the time, there were other factors which far outweighed these comparatively trivial disadvantages. One was the unrivaled opportunity thus presented to talk to representative Americans about their government and their problems and themselves. In different sized towns and in different states there were differences in speech, manner and appearance, but all were Americans with common problems, aspirations and perplexities. Between me and every audience I addressed on

these circuits, there was quickly established what was to me at least a feeling of kinship, of oneness, and friendliness. I tried sincerely to talk to all of them, not as an oracle delivering a judgment, but as a fellow American who with them was trying to make his country a better, a safer, and a finer place in which to live. Audiences seemed to immediately respond to this attitude and their response made my work infinitely easier. For me, perhaps the most enjoyable part of these lectures were informal talks which I had with many men and women who would come to the platform after the lecture was over, to talk with me further about matters which I had mentioned. I came, in this way, to have contact with many splendid people who had given of their strength and talent during the best years of their lives in a conscientious, creative effort, the result of which was the building of the America that we know. Contact with such people made me forget wholly the small discomforts which were attendant and seemingly prerequisite to my meeting with them.

In addition to the people whom I met in the audience, I enjoyed my contacts with the other performers on the circuit, with all of whom I developed a degree of friendly intimacy. Most of them were people of unusual ability or experience and many of them were possessed with truly extraordinary talents.

It was also a great pleasure to me to meet the business men of the towns in which I spoke, and I did meet a great many of them inasmuch as they were usually sponsors of the Chautauqua. It was in the homes of a great many of them, sometimes for meals and to spend the

night, which was invariably a relief from the public restaurant and hotel.

The subjects of my lectures varied somewhat from year to year, but my favorite and the one which I considered to be most successful was on "Trusts." This was indeed a favorite subject in the middle west for many years. The usual complaint was against Federal judges because such judges had set aside many state laws correcting corporate abuses, notably the maximum passenger and freight rate laws. During the eighties, nineties, and up to World War I, there was a crusade throughout the middle west against Federal judges, because it was thought they were too friendly to corporate interests. Senators Cummings and Dollivar of Iowa were leaders in that movement. Senator LaFollette of Wisconsin was also critical of Federal judges. The regulation of utilities was being undertaken by all of the states and such utilities would remove their cases to Federal Courts, and it was difficult to enforce regulations.

I devoted considerable time to this and as a part of my lecture in 1914, and in commenting on the act of the Federal judge in granting this injunction in favor of the railroads to restrain the state officials from enforcing the maximum freight rate laws, and the two-cent passenger rate law, said:

> "The judge of a Federal Court, besides being an ornament, is a very useful tool in the service of the corporations of the country. With a Federal judge handy, it is absolutely useless for a state to try to enforce a law against a railroad company or any other corporation that has money and big men be-

hind it. The deadly restraining order comes as regularly and as certainly as the sun in the morning, wherever the legal machinery is set in motion to enforce the law against a corporation. That was the case in the railroad rate matter. The rate laws were enacted, but when an attempt was made to enforce the law, Judge McPherson of the Federal Court annulled it by injunction until it was declared good law by the United States Supreme Court.

* * * * *

"For years and years, the people of this country had complained of the action of this Federal judge in granting injunctions against state laws and, in fact, this one judge had granted nineteen injunctions against laws passed by the Missouri Legislature until it had gotten so that the Missouri Legislature was not the law-making body that the fathers intended it should be, but our laws were made by this Federal judge at Kansas City, and no matter what kind of law we passed, it was an easy matter for the railroads to rush into that court and secure an injunction and thus tie the law up.

"Where the railroads can induce a Federal judge to enjoin the enforcement of a law, even though they ultimately lose the case, they have 'embalmed' the law for six or seven years, and in many instances when the Legislature passes a law it will be useless in six or seven years, but is needed at the time; so it is apparent what a great help a Federal judge can

be to railroads by enjoining our laws until their day of usefulness to the people is over.

* * * * *

"I have all the reverence and respect for courts that it is possible for a man to have, and I believe as a whole in the honor and integrity of the judicial system of this nation, and all my life I have endeavored to uphold the majesty of the law, and I would not now be known as one who attacks courts indiscriminately.

"As one judge has said, 'to the courts is entrusted the protection and safety of life, liberty, property and character, the peace of society, the proper administration of justice, and even the perpetuity of our institution and form of government. When the temples of justice become polluted or are not kept pure and clean, the foundation of free government is undermined and the institution itself threatened.'

* * * * *

" 'It was the boast of Augustus that he found Rome of brick and left it of marble. But how much nobler will be the sovereign's boast when he shall have it to say that he found law dear and left it cheap; found it a sealed book, left it a living letter; found it a patrimony of the rich, left it the inheritance of the poor; found it the two-edged sword of craft and oppression, and left it the staff of honesty and the shield of innocence!' "

The 1915 Chautauqua season ended at Cincinnati, the home of William Howard Taft. The week before, Honorable William Jennings Bryan, Secretary of State, who had introduced grape juice as the national beverage at all state dinners, much to the delight of the prohibitionists and to the disgust of the distillers, had delivered his address on the "Prince of Peace." In this speech, he stated that if America were attacked, one million midwest farmers would meet the invaders on the eastern short line and repulse them with pitchforks.

About this time, too, Harry K. Thaw had just been released from the insane asylum at Mattewan and was expected to pass through Cincinnati on his way to the World's Fair at San Francisco. Thaw was from a well-known Pittsburgh family, and had been committed to Mattewan some years earlier for slaying Stanford White on a roof-garden in New York City. The murder came about as a result of Thaw's uncontrollable anger against White for alleged mistreatment of Thaw's wife, Evelyn Nesbitt, before their marriage.

Strickland Gillilan, the great humorist-lecturer, delivered the final address at the Chautauqua and in his characteristic style lifted the audience to great heights, then dropped them abruptly by saying: "I am exceedingly glad to be in Cincinnati again because it is the home of that great statesman and jurist, former President William Howard Taft." The applause was tremmendous. He then said: "I also observe by the papers that the grape juice champion, Mr. Bryan, spoke here last week and I am glad to follow him on the platform." He received considerable applause. He then said: "I also observe that a jury freed Harry K. Thaw from

Mattewan and he will pass through Cincinnati in a few days on his way to the World's Fair. By the way," Gillilan added, "he is the only one of the three ever declared sane by a jury."

The days when I was on the Chautauqua circuit, touring the middle west, crusading earnestly and sincerely for those things which I thought then and still think were right, when I was constantly meeting new people and talking to them about our common problems, were indeed great and glorious days for me. Then, as never before or since, did I look into the face of America, then did I feel the heartbeat of my country. Many of the things of which I spoke have come to pass and in their place there have come into being, as an outgrowth of our changed economy, new problems of equal or perhaps greater moment. Were I a young man once more, full of the enthusiasm and zeal of youth; and were Chautauquas still operating throughout this country as in days of yore, I can think of nothing that I would rather do than again go to America and talk to America about America and reaffirm my faith, as I did then in this, my country.

XV

THE CASE OF OSCAR McDANIEL

St. Joseph is a town rich in Missouri history. One of its most illustrious citizens was the poet, Eugene Field. In his world-wanderings, he never forgot the scenes he left behind him, and often put his yearnings for them into his verse.

Saint Jo, Buchanan County,
  Is leagues and leagues away,
And I sit in the gloom of this rented room,
  And pine to be there today.
Yes, with London fog around me
  And the bustling to and fro,
I am fretting to be across the sea,
  In Lover's Lane, St. Jo. . . .

In the Union Bank of London
  Are forty pounds or more,
Which I'm like to spend, ere the month shall end,
  In an antiquarian store;
But I'd give it all, and gladly,
  If for an hour or so
I could feel the grace of a distant place—
  Of Lover's Lane, Saint Jo."

It was a far cry from the Lover's Lane of which Field spoke to the Lover's Lane which was the scene of a murder some years later. Oscar McDaniel, Prosecuting Attorney of St. Joseph, and his wife, Harriet Moss McDaniel, lived on Lover's Lane. During the summer of 1916, Mrs. McDaniel was brutally murdered by the use of some heavy instrument which crushed her skull.

The family was very prominent, and naturally the tragedy caused much speculation as to who the murderer might have been. Many people suspected the husband. The Chamber of Commerce and several other civic boards appealed to the Governor to send the Attorney General to the county to take charge of the investigation. The Governor of Missouri has the authority to request the Attorney General to take charge of any criminal prosecution in the state, and thereupon I was directed by Governor Major to try the case personally.

The first jury selected consisted of many persons of bad character. That it was not a fairly selected jury was obvious. I filed a motion to discharge the jury and requested an investigation of the jury wheel. The investigation disclosed that the names of the jurors were placed in the wheel with the use of two different kinds of cards . . . one a thick one, the other a thin one. The better class of citizens were on the thick cards . . . the others on the thin cards. Therefore, the judge dismissed the jury and ordered a new panel selected. But the new jury was filled with warm political friends of Mr. McDaniel, so that securing a fair jury seemed almost an impossibility. Mr. McDaniel's father, a very prominent farmer, was on the bond of the sheriff and I thereupon

filed a motion asking the court to appoint the coroner instead of the sheriff to take charge of the jury during the trial. The motion was denied by the trial judge, Honorable Thomas F. Ryan.

When the trial came on Oscar D. McDaniel testified that while returning home at two o'clock one morning, he was fired upon several times from a hill on which his house was located, when he got out of his car to open the garage doors. There were several bullet holes in the windshield and the body of the car. He further testified that he went into the house and found his wife in her bedroom cruelly murdered, and her head crushed. He thereupon called the police and they took charge of the matter.

Two children, about eight or ten years of age, were in an adjoining room with the door open, but they did not awaken. According to McDaniel, he was at home with his family at eight o'clock that evening, when the telephone rang and a bartender in a certain saloon in St. Joseph told him his brother Charley was there, creating a disturbance. The bartender asked him to come down and take care of him, so he went to the saloon, looked around, made inquiries, and found that this brother wasn't there. The bartender and several other people in the saloon at the time testified that they did not see Charley in the saloon during the evening and the bartender said that he did not see McDaniel during the evening, and he did not ask about his brother. McDaniel then stated that he visited several other saloons, looking for his brother. However, employees of these saloons testified that they did not see McDaniel that night. McDaniel then said that he had heard of a place in the

town that was selling liquor illegally, and concluded to investigate it while he was out. He said that he stood in an alley for an hour to see who went into this place, so that he might subpoena them as witnesses before a grand jury, but during the time saw nobody whom he recognized. Several witnesses testified that they passed through the alley several times during the hour McDaniel claimed to have been there, and that they did not see him.

McDaniel then said he had received complaints about a house in the country selling liquor, and thought he would go out and make an investigation. He supposedly drove to the rear of the place and stood by the barn in the back yard for an hour or more, trying to see who went in. There, too, he recognized no one. The owner of the place testified that he had a vicious dog which he kept chained in the back yard, and that the dog always barked when anyone approached. The dog did not bark that night.

McDaniel then testified that he returned home about two o'clock and discovered the murder of his wife. The telephone company produced records showing that no one called his house at eight o'clock that night. The state offered evidence that Mrs. McDaniel was contemplating divorce because of a friendship between her husband and a married woman in the town. There was testimony that they frequently were seen together.

McDaniel's lawyers were Charles F. Strop, one of the ablest trial lawyers in northwest Missouri, and Louis Gabbert, a very brilliant orator. The trial took nearly a month and each side was given four hours for the closing argument. I took two hours for opening and closed

with two hours, as there had been several hundred witnesses, and the case was highly complicated. The state's evidence was highly circumstantial and when the jury retired, it brought a verdict of not guilty only two hours later. It was reported that the jury stood seven to five for acquittal from the first ballot. Thus ended one of the greatest murder mysteries in Missouri, which to this day has never been solved.

When a person is charged with the commission of a crime, the most important thing is to find a motive, because there is always a motive or reason for every crime. In France, it is *cherchez la femme.* In this instance, we were able to show that McDaniel, who was a candidate for re-election, was informed by his wife that she was going to consult an attorney, with the view of bringing suit for divorce against him. She decided upon this course of action because of his relations with the woman previously mentioned, and had, in fact, consulted an attorney. However, she was killed before the suit could be filed.

At the trial the woman in question and her husband both appeared as witnesses for McDaniel. The woman testified that she and Mrs. McDaniel were great friends and that she knew McDaniel only as a friend of his wife. Her husband testified that the four of them were together a great deal, and that he and his wife's interest in the McDaniel family was occasioned by his wife's friendship for Mrs. McDaniel. This, of course, was more or less fatal to the state. The fact that the husband believed in his wife and stood with his wife in face of the charges influenced the jury. The trial ended on December 5, 1916, and on the 8th day of February, 1917,

the husband of the woman mentioned shot and killed her, and then killed himself. He lived for several days before dying, and in answer to a question as to whether or not Oscar McDaniel had anything to do with his shooting his wife, he replied, "He certainly did." The theory was that the husband at last became aware of his wife's infidelity, became for the moment insane, killed her, and then attempted to kill himself.

McDaniel left St. Joseph in July 1917, and was never seen again. He went West, and assumed the name of Russell H. McDrew. He became an officer in a fruit growers' association in California and lived there for many years. He died in a hospital at Washington, D. C., and on June 10, 1936, a casket containing his body was sent to St. Joseph. It bore the notation "From Garfield Hospital, Washington, D. C. Date of death, June 7, 1936. Name, Russell H. McDrew. Age, 55 years." On June 7, 1936, the casket and its contents were placed in a grave on Mount Mora Cemetery in St. Joseph beside the grave of his former wife, Harriett Moss McDaniel. At the foot of the grave is a cement block bearing the letters "McD."

XVI

PERSONALITIES OF THE JUDICIARY—THE POWELL CASE—THE THIRD DEGREE—A HAM DINNER—THE MISSOURI MULE

While I was Attorney General, the Supreme Court of Missouri was an exceedingly able one, and I naturally became intimately acquainted with each of the seven judges. There is a very close relationship between the Attorney General's office and the judges, and matters of public interest are not treated or considered as are private cases. The court consisted of: Henry Lamm, Sedalia; Archelaus M. Woodson, St. Joseph; Waller W. Graves, Butler; Henry W. Bond, St. Louis; John C. Brown, Fredericktown; Charles B. Faris, Caruthersville; and Robert Franklin Walter, St. Louis.

Judge Lamm was a great humorist and wit, as his opinions will show. They were quoted outside of Missouri more than those of any other judge on the bench in my day. He was exceedingly popular with the Bar, and was a great all-'round judge. In 1916, he was Republican nominee for Governor, but was defeated in the general election by Frederick D. Gardener, of St. Louis, by 2263 votes. President Wilson carried the state by 28,693 votes and the Republicans contended that the Democratic machine in Kansas City had withheld its

returns until it was determined how many votes were needed, and then stuffed the ballot boxes in favor of Gardner, causing his election. Judge Lamm filed a petition in the Democratic Legislature in 1917, asking permission to contest the election, as such a contest, under our Constitution, had to be conducted by the Legislature and could not be brought in a court. He alleged fraud and that he was cheated out of office by the wrongful acts of the Kansas City machine; but the Legislature denied his petition and the matter ended. In 1920, he was asked by the Republicans to allow them to use his name again, but he replied that he could not do so, because there was a Constitutional prohibition against a man being elected twice to the office of Governor.

Judge Woodson came from an old family in Missouri. His uncle, Silas Woodson, was the first Governor after reconstruction days, in 1872. He had been a circuit judge in St. Joseph before being elected to the Supreme Court bench and was an able judge. He asked a great many questions from the bench and had a great interest in every case.

Judge Graves, of Butler, had also been a circuit judge before his election to the Supreme Court. He was a very able judge and a remarkable man.

Judge Bond, of St. Louis, had been a judge of the St. Louis Court of Appeals and a Supreme Court Commissioner before going on the bench. He was a graduate of Harvard, and was well educated. He was very dapper in appearance and exceedingly well groomed. He was regarded as able.

Judge Brown, of Fredericktown, was elected in 1910 in what was known as the Republican landslide, defeat-

ing James B. Gantt, of Clinton, who had been on the bench for many years and was the idol of the Missouri Bar. The Republicans had no idea that their ticket would be elected, and Judge Brown, an Ozark Mountain lawyer without much legal experience, was placed on the ticket to fill it out. Everyone, including himself, was surprised when he was elected, and a few lawyers thought he would be able to carry on the work. He died before the end of his term, but he had firmly established himself as an able judge, and the Bar had the greatest respect for him. He was plain and unassuming, with a sense of justice, and had he lived throughout his term, he would have been regarded as one of the great judges of that day.

Judge Faris was from Caruthersville, in southeast Missouri. He was a great student. He was later appointed to the Federal District Bench in St. Louis, and then to the Circuit Court of Appeals for the Eighth Judicial Circuit, and was one of Missouri's great lawyers.

Judge Walker, of St. Louis, was a former Attorney General, and after leaving that office, he settled in St. Louis, where he practiced law until he went on the Supreme Bench in 1913. He was a very handsome man with a pleasing address, highly educated, and was one of the ablest and most popular men on the bench. More will be said regarding these judges and their individual views of justice.

In 1914, I presented to the Supreme Court the case of State vs. Powell. The defendant was a colored man, twenty-four years old. He was charged, along with others, with murder in the first degree—the brutal kill-

ing of a cashier in the Missouri-Pacific freight office at Kansas City, while such office was being robbed. The defendant was held by the police for many hours and he finally confessed to the crime. At his trial, he denied the confession and said it was secured from him because of brutality of the police department, commonly called the third degree; he said that he had been questioned hour after hour and repeatedly slugged and beaten until his resistance was worn out and he then signed the confession. The lower court allowed the confession to stand and he was sentenced by a jury to ninety-nine years in the penitentiary. The Supreme Court found the confession had been secured by brutality and reversed and remanded the case for another trial. Ultimately, he received a much smaller sentence because, at best, he was only remotely connected with the robbery and murder.

The Police Department of Kansas City and other law agencies have been notorious for years in the use of their third degree against prisoners and there are many cases in the reports showing the most vicious form of brutality used. This is more or less a common practice throughout the United States and it is one of the great blots against a civilized people. It has no place in our system, and courts have repeatedly warned police officers that confessions obtained by brutality will not be sustained, and yet day after day this practice is continued. Some of the stories told in the reports are unbelievable, yet they are true. When a man is arrested, the police have a right to question him, but he is not required to answer. There is no way in which he can be made to answer. The police have no authority to

assault him or to punish him in any way because punishment is ultimately for the courts. He is entitled to an attorney and proper time to prepare a defense, because under our laws, which are unlike the law of some nations in Europe, a man is presumed to be innocent until he is proven guilty beyond a reasonable doubt. This presumption remains with him from the time of his arrest, throughout the entire trial, and until a verdict of guilty is assessed against him. In many instances, prisoners have been slugged until unconscious, then kicked to restore consciousness; a hose is inserted in their mouths and their stomachs filled with water, and they are beaten with a rubber hose. All the hair on their bodies is burned off and they are left without food or water. Anyone will confess to any crime under such conditions and a confession has no value, and often a guilty person is allowed to escape. Police officers, anxious for a conviction, often resort to unlawful methods to obtain it.

We deplore mob law and lynchings in the United States, but we seldom criticize our police departments for third degree methods, and yet the latter are more destructive to safety than the first. Courts are careful to protect one mistreated, and conviction after conviction is set aside, yet the practice continues. Police officers should never lay a hand upon a prisoner, and some of the finest departments secure convictions by simply talking to the prisoner, and interrogating him as to his whereabouts. If he wants to answer, he can do so, but he cannot be compelled to answer. The third degree method has no place in a country like ours because with the modern day equipment which all up-to-date police

departments have, the advantage is tremendously in their favor, and few guilty men escape. Such departments are equipped with every known device to detect crime; lie detectors, truth serum, scientific laboratories, finger print experts, ballistic experts and medical and chemical departments. Intelligent officers can always protect the public without brutality and police officers unnecessarily assaulting prisoners should be placed in the dock themselves.

I argued a personal injury case in the Supreme Court after I was elected Attorney General. A man had been killed by a Wabash train at a railway crossing near La Plata. There were no eye witnesses. The trial judge had sustained a demurrer and I had appealed to the Supreme Court. While the case was under submission, a friend of mine sent me two country hams, and some Missouri greens and I arranged for a dinner at the Jefferson City Country Club for the members of the court. While waiting with several automobiles to take the guests out to the dinner, Judge Lamm came to my car and said, "Young man, don't you know it is a dangerous thing to invite a judge to a meal while he has a case of yours under consideration?" I did not have this particular case in mind and was slightly embarrassed, but he quickly added, "However, it would be much more dangerous to your case if you did *not* invite him!" The next day, he handed down an opinion in this case affirming the lower court and deciding against my client. There were only two seconds of time within which the engineer on the train could have acted to prevent this accident. I based a great deal of my argument on these two seconds. Commenting on this element of time, and

twitting me, Judge Lamm quoted one of his favorite characters, Samuel Butler:

> "He could distinguish and divide
> A hair 'twixt south and southwest side.
>
> For he, by geometric scale,
> Could take the size of pots of ale.
>
> And wisely tell what hour o' the day
> The clock does strike, by algebra."

Judge Lamm wrote an opinion in which he paid his respects to the Missouri mule. After stating the suit involved only $5.00 and had been filed by the owner of a buggy which had been damaged by a Missouri mule, the question seemed to be whether or not it was negligence to drive a mule upon the streets of Springfield. After discussing the facts, Judge Lamm, in his inimitable way, removed the mule from its humble position to that of an exalted one:

> "There are sporadic instances of mules behaving badly. That one that Absalom rode and 'went from under' him at a crisis in his fate, for instance. So, it has been intimated in fireside precepts that the mule is unexpected in his heel action, and has other faults.
>
> "In Spanish folklore, it was said: He who wants a mule without fault must walk. So, at the French chimney corner, the adage runs: The mule long keeps a kick in reserve for his master. 'The mule

don't kick according to no rule,' saith the American negro. His voice has been a matter of derision and there be those who put their tongue in their cheek when speaking of it.

"Witness the German proverb: Mules make a great fuss about their ancestors having been asses. And so on, and so on. But none of these things are factors in the instant case; for here there was no kicking and no braying standing in relation of *causa causans* to the injury to the wheel.

"Some care should be taken not to allow such scornful remarks as that 'the mule has no pride of ancestry or hope of posterity' to press upon our judgment. He inherits his father's ears, but what of that? The ass' ears, presented by an angry Apollo, were an affliction to King Midas, but not to the mule. He is a hybrid, but that was man's invention centuries gone in some province of Asia Minor, and the fact is not chargeable to the mule.

"So the slowness of the domestic ass does not descend as a trait to the Missouri mule. It is said that a thistle is a fat salad for an ass' mouth. Maybe it is also in a mule's, but be it so, surely his penchant for homely fare cannot so far condemn him that he does not stand *rectus in curia.*

"Moreover, if his sire stands in satire as an emblem of sleepy stupidity, yet that avails naught; for the authorities (on which I cannot put my finger at this moment) agree that the Missouri mule takes after his dam and not his sire in that regard. All asses are not four-footed, the adage saith, and yet

to call a man an 'ass' is quite a different thing than to call him 'mulish' (vide, the lexicographers).

"But, on the other hand, to sum up fairly, it was an ass that saw the heavenly vision, even Balaam, the seer, could not see and first raised a voice against cruelty to animals (Num. 22: 23 et seq.). So, did not Sancho Panza by meditation gather the sparks of wisdom while ambling along on the back of one, that radiated in his wonderful judgments pronounced in his decision by the common sense rule of knotty cases in the Island of Barataria? Did not Samson use the jawbone of one effectually on a thousand Philistines? Is not his name imperishably preserved in that of the fifth proposition of the first book of Euclid—the *pons asinorum*?"

* * * * *

In 1916, Judge Woodson was a candidate for re-election. The liquor question was very acute in Missouri, and the prohibitionists attempted by initiative to provide constitutional prohibition at the general election that fall. The Secretary of State refused to accept the initiative petitions on the ground that the proposal was legislative rather than constitutional. A mandamus suit was then filed to require him to accept the petition and to place the proposal on the ballot at that election.

I represented the Secretary of State and the Prohibitionists employed John H. Lucas from Kansas City, who has been referred to before. He was a very adroit courtroom lawyer and I noticed that during his argu-

ment, he kept stepping down to the last judge on the bench, Judge Woodson, and that he addressed most of his remarks to him. The reason was apparent later when Mr. Lucas, in addressing Judge Woodson, who was a candidate for re-election at the same election, dramatically exclaimed: "Your Honor, sixty thousand voters have petitioned for the right to an election on this question." Judge Woodson, thinking perhaps of his own election, said, "How many, Mr. Lucas?" Mr. Lucas repeated, "Sixty thousand qualified voters are demanding the right to vote on this question." Judge Woodson immediately said: "I think they should have the right to vote," and right then I lost the case.

On another occasion, a lawyer arguing a case before the court questioned some statement in a brief which I had prepared. Judge Woodson asked him if he intended to accuse me of making mis-statements. When the lawyer replied that he did, Judge Woodson got up and left the bench, saying he would not sit there and allow his friend to be maligned.

Judge Woodson operated a farm a few miles from the capital. He bought a high-priced bull to go with his herd. This bull was a vicious animal and he attempted to chase Judge Woodson from the pasture. The Judge drew his knife from his pocket, and cut the bull several times. He always claimed that he whipped it. Others said that Judge Woodson ran from the pasture. To accuse him of this always made him very angry. He kept a lot of chickens in the basement of the Supreme Court building and in his bathroom. He raised them in incubators, and the court was always trying to have the chickens taken out

of the basement, but they remained there as long as he was there.

Usually there are childish quarrels between members of the court and in some instances, the feeling is rather bitter. Judge Sherwood, who was on the bench several years before this time, seldom spoke to the other members of the court. Judge Woodson fell out with Judge Bond and they did not speak for several years and usually dissent from each other's opinions.

The Attorney General's office handles all of the felony criminal appeals in Missouri. They amount to several hundred a year and they are briefed and argued in the Supreme Court.

On one occasion, a man was convicted of rape in Kansas City and sentenced to be hanged. The statute required a motion for new trial to be filed within four days after verdict and during the same term of court. This verdict came in fifteen minutes before midnight, Saturday night, the last day of the term. The motion for new trial was filed the following Monday, which was after the end of the term. I only briefed the case on the record proper. The case was assigned to Judge Faris after argument, and he came to my office and asked me if I expected him to have a man hanged simply because his lawyer had not filed a motion for new trial fifteen minutes before midnight, which was the end of the term. I told him he had no discretion, that the court had repeatedly held that where no motion for new trial had been filed within four days and during the same term of court, there was nothing before the court but the record proper, which consisted of the indictment, plea, instructions and verdict, and

as they were all in proper form, the judgment would have to be affirmed and the man hanged. Judge Faris replied, "Not with my vote. I will find some way to consider the evidence and unless the entire trial was regular, and the evidence justifies a conviction, I will remand the case." This he did, and sent the case back for a new trial. On the second trial, the party was given twenty-five years in the penitentiary. He was perfectly right and always jealously guarded the right of the individual. Unless you convinced him that a man was guilty, that he had had a fair trial, he would never vote for a conviction. He never allowed a technicality to stand in the way of justice.

Judge Graves was the outstanding judge on the bench during my four years in office. He was regarded as one of the ablest judges that had ever sat on that bench. He not only had a fine knowledge of law, but he was a great judge of human nature, and had he been in politics, he would have been a great politician. Naturally, he assumed a leadership and soon a rivalry developed between him and the other judges.

St. Louis had passed an act to tax street car fares one mill, known as the "mill tax." It was resisted bitterly by the street car company and had been in many courts. It finally reached the Missouri Supreme Court, from the Supreme Court of the United States, for final decision. Judge Graves wrote an opinion holding the "mill tax" invalid and unconstitutional. Judge Faris and Bond agreed with him.

Judge Walker wrote a dissenting opinion, holding the "mill tax" valid and Judges Brown and Lamm agreed with him.

This gave Judge Woodson the deciding vote and he was courted by both sides for several months as ardently as a lover courts his sweetheart. It became generally talked of throughout the building and the employees would make wagers as to which way Judge Woodson would vote.

Judge Graves would talk with him and he would apparently agree with his views. Then Judge Walker would discuss the matter with him and he apparently would agree with Judge Walker. The matter stood this way for several months but finally Judge Woodson voted for the Walker opinion and the "mill tax" was held valid by a four to three vote.

One of the most interesting of the older members of the Supreme Court was Judge James D. Fox. Judge Fox was brilliant and studious. These are the two necessary prerequisites of an excellent Judge. The opinions written by Judge Fox and read today reveal these characteristics in him. The following story is told concerning him and I reproduce it here as being an excellent example of a robust type of humor which in these more anemic days, may not be considered in the best of taste.

Judge Fox was short in stature and in his later years, due to a hearty appetite and a sedentary way of life, developed an abnormally large stomach. This highly unfortunate concatenation of circumstances made it impossible for the learned man to pass water because of the fact that he simply could not contact the essential organ. He resolved this formidable obstacle by calling upon the services of Uncle Jim, an aged Negro who at this time and for many years prior, had occupied a some-

what nebulous position in the Supreme Court Building. When Judge Fox felt that he required relief he would call Uncle Jim, the two would proceed to the lavatory, where Jim would supply the deficiencies of the Judge in making the necessary arrangements for passing water. On one particular occasion when the learned Supreme Court had assumed his normal stance the faithful Jim, after opening the clothes of the Court and making the usual search which heretofore had always brought satisfactory results, looked up and in plaintive tones said, "Mistah Judge, Sur, I cain't find it!" Looking down somewhat austerely upon his faithful but somewhat confused servitor, Judge Fox declaimed in stentorian tones: "Well, Jim, that isn't my responsibility! You had it last! You had it last!"

XVII

KANSAS CITY

In the summer of 1916 I was a candidate for the Democratic nomination for Governor. I was defeated for that nomination and have not ever again been a candidate for public office.

At the close of my term as Attorney General, instead of going back to La Plata where I had done all of my practicing, I concluded, for various reasons, to locate in Kansas City. I had many friends there, some of whom were not lawyers. I was acquainted with almost all of the leading lawyers there, however, having met them in my capacity as Attorney General, in private law suits, and under various circumstances throughout the state.

Kansas City at this time was generally regarded as the most typically American of all our cities. This was true in part because of the constitution of its population, there being a comparatively small foreign element. It was, however, even more true from the standpoint of the attitude of the people there, an attitude which was confident, enterprising, vigorous, and in general, conformable to the point of view which we commonly think of as typically American. There was, too, in Kansas City at this time, a number of men who through

their acumen, initiative, mental and physical vigor, represented the American individualist at his best.

In the field of business, R. A. Long was probably the most outstanding. Born a poor boy in Shelbyville, Kentucky, he had come to Kansas City in 1885 with only a very modest amount of capital. By virtue of his industry, his imagination and financial daring, he established the greatest lumber empire in the world. The town of Longview in the state of Washington was owned entirely by him and was the seat of his lumber operations, from which point millions of feet of lumber were sent to retail stores and distribution points throughout the United States.

In the field of banking, Colonel William T. Kemper, President of the Commerce Trust Company, was typical of American financiers. Kemper was possessed of great financial insight, he was a man of powerful will, of unalterable determination, and of a steadiness of character which eminently qualified him for the highly responsible position which he so capably filled.

In the ministry, Dr. Burris A. Jenkins was perhaps most typical of the new type of minister. He was a man with a deep fund of scholarship, a fine quality of humor, a background of vast and varied experience, and a personality that was rugged, friendly, and singularly attractive. He had had a wide experience in newspaper work, which gave him a point of view which was charitable to the foibles and weaknesses of mankind. For many years he occupied one of the most important pulpits in Kansas City and was a pulpit orator of unequalled brilliancy, eloquence and charm.

In my own field of the law, James A. Reed, who had

come to Kansas City as a young man from Iowa, undoubtedly came nearer than anyone else there to filling the layman's conception of a lawyer. Though not unusually large nor exactly handsome, Reed yet had a personality so commanding, a bearing so suggestive of dignity and power, that in any group in which he was present, he stood out as truly outstanding men always do. Reed's legal knowledge was somewhat beyond that of the average lawyer of the better sort, although there were lawyers in Kansas City at that time whose legal knowledge was more profound. None, however, equalled Reed in aggressiveness, in quickness of thought, in the ability to seize upon and make the most of the strongest points in his own case and to single out and enlarge upon the vulnerable spots in the opposition. And certainly no one in Missouri in his time, and probably no one in the entire United States at any time, has been possessed of speech so vitriolic, so sarcastic, so persuasive, as James A. Reed. As a lawyer orator, addressing a jury, I think that he has never been excelled in this country. He demonstrated this great and unique quality upon innumerable occasions in courtrooms and at political meetings throughout Missouri and in the Senate of the United States. As Prosecuting Attorney of Jackson County, he secured a record for convictions which was never equalled before or since, and in civil practice he engaged in some of the most important law suits of his time.

Kansas City in those times impressed one as being a city of young men and I believe that this was true. The more ambitious and alert were attracted to it

because it was growing, was vigorous, and held forth the prospect of great opportunities for gain and advancement.

I was extremely fortunate in that almost at once after my location in Kansas City, I had a steady practice of good quality which filled my time and gave me every opportunity for advancement in my profession. One of the earliest of these cases and one of the most interesting which I have ever had, grew out of the first World War. It arose out of a situation which was far from new in the history of humanity but one which carried with it the burden of tragedy which such situations almost always carry. When Germany forced the United States into World War I, every red-blooded young man burned with resentment and longed to help crush the Kaiser and his unholy forces. Two splendid young men in their late twenties, then living in the state of Missouri, were no exceptions. They were married, and each was the father of several young children, but they wanted to fight. Upon being told to wait until the Government needed them, they insisted upon being among the first to see service. Their families for several generations had helped make history in the United States, and the instinct to preserve the ideals for which their ancestors had fought was strong.

They were sent to France, and although they were in many battles, they miraculously managed to escape injury. They fought at Chateau Thierry and in the battle of the Argonne, and between the two engagements were granted leaves, which they spent in Paris. They were billeted there in an old historic French

Chateau at the edge of the city, near the Marne River, where the French had stopped the Germans in 1914. The Chateau was wrecked and the French family to whom it belonged had felt the ravages of the war. The father and two sons had been killed in stopping the German drive on Paris; the mother and two daughters, aged 20 and 14, had lived alone since their death. The family was one of the oldest in France, was of titled ancestry, and at one time had been very wealthy.

The two American officers could not speak French, but the language of love is universal and French girls are very lovely. It was not surprising that one of the young Americans fell in love with Helene, the oldest daughter, and that she fell desperately in love with him. His home ties were forgotten. Although realizing the hopelessness of the situation, they concluded to make the most of it and spent the last week of his leave together. The boys were returned to their companies and were sent immediately into action against the enemy in the battle of the Argonne. Both were fortunate enough to come out alive, but were shell-shocked. Shortly after the Armistice Day they were denied access to Paris and invalided home. Months passed. Then one day the officer who had fallen in love with the French girl was surprised to hear her voice over the telephone and to find that she was at the Union Depot of his home town. She explained that she was expecting a child and wanted it to be born in the country from which its father came. He immediately secured a place for her to live.

Several weeks later, his wife overheard a telephone conversation and learned of the unhappy situation. He

told her the truth of the matter and suggested a divorce in order that he might marry Helene. His wife refused to consider it. She was of an old, aristocratic family, and had many strong connections. She finally induced the Immigration Department at Washington to file deportation proceedings against Helene on the ground that she was an undesirable alien and had falsely represented herself to be of good moral character when she entered the United States, when in truth and in fact she was of bad moral character. The Government sent many of its investigators to go into the case and it was thoroughly prepared. The feeling was very tense for the family and friends of the wife wanted nothing more than to humiliate Helene and return her to France.

The young officer's family was also an old American family of considerable importance and they employed me to represent the young lady and to see that her rights were protected.

It is a violation of our immigration laws for a criminal or immoral person to enter the United States. Any alien desiring to enter must make an affidavit that he is of good moral character. The Government is intensely interested in keeping immoral women out of the country because in many instances white slavers of Europe have attempted to traffic in womanhood by sending young girls to brothels in the United States. This, however, was not that kind of case. Here was a young lady from one of the finest families in France. She had fallen desperately in love with an American soldier who was fighting for her beloved country. He was everything to her, and she was willing to give

him her life. Had not America intervened to save France from the horde of German soldiers who were overrunning it? Was not America going to reestablish France and drive the hated Germans from its borders? Was not the American soldier daily offering his life in defense of the French people in order that they might live? She saw no wrong in her actions but like woman "from the time the morning stars sang together," gave her all to the man she loved.

Helene was very bitter at the trial and resented the thought that people could criticize her for what she had done. The case was bitterly contested and the Government tried desperately to have the young lady returned to France. The matter was in the courts for nearly two years and at the end of that time Helene was completely vindicated and her entry into the United States was approved. The Government finally concluded to take the case no further and it ended as it should have.

During the trial, the wife refused to consent to a divorce or to secure one. At its conclusion, the husband secured a position in Mexico and there obtained a Mexican divorce. The French girl joined him, they were married, and are still living there today with their children. The wife refused to accept the Mexican divorce but a few years thereafter died. None of the persons involved intended anything wrong. It was simply a case of war madness.

An entirely different kind of case involving Samuel Wernhause who was indicted in the Superior Court of Boston, Massachusetts, for the crime of larceny. He left that state and came to Kansas City. On the 2nd

day of June, 1919, the Governor of Massachusetts made request upon the Governor of Missouri that he cause Wernhause to be apprehended and returned to Massachusetts, there to be dealt with according to law. Wernhause came to my office and employed me to resist the efforts to take him back to Massachusetts for trial. I asked the Governor of Missouri to give us a hearing before he honored the request. He did so, and ordered Wernhause returned to Massachusetts for trial. An assistant prosecuting attorney and two police officers from Boston attended the hearing and attempted to seize Wernhause and place him in a car so that he could be taken from Missouri. However, I had asked the Sheriff of Cole County to attend the hearing and to protect Wernhause, until I could apply for a writ of habeas corpus from the Circuit Court. The Sheriff interceded and claimed Wernhause as his prisoner. For a while it looked as if there would be trouble between the Boston and Missouri officials.

I then applied for a writ of habeas corpus before Judge Slate of Jefferson City to prevent the officers from taking Wernhause back to Massachusetts. At the conclusion of that hearing, the judge sustained the Governor and ordered Wernhause turned over to the officers of Massachusetts who were there to receive him. I filed another application for a writ of habeas corpus before the Kansas City Court of Appeals, and Wernhause was released on bond and the matter argued and presented to that court.

Our defense was that Massachusetts had a very unusual law, known as a "restitution law," providing that when a person had been found guilty of larceny,

as in this case, he be allowed to pay the value of the article stolen and upon so doing, that he be released. Wernhause was charged with stealing silk from a delivery wagon and pleaded guilty. He made one payment in restitution on the 25th day of June, 1918, and was given time to pay the remainder which he did in December, and he was released on probation. He then came to Kansas City and the extradition was based on the theory that he was a fugitive from justice and the state of Missouri should, therefore, surrender him for further prosecution. The case involved a construction of the Federal Constitution, which provides that "one who shall flee from justice and be found in another state" shall on demand of the executive authority of the state from which he fled, "be delivered to the demanding state." Our position was, that he was not a fugitive from justice and that he had not fled from the state of Massachusetts, but had been released from the "restitution Court." The Court, in an opinion, so found, and refused to allow the state of Massachusetts to have Wernhause for trial and he remained in Kansas City.

In 1920 Don Thompson was arrested in Kansas City on a charge of stealing a Ford automobile which was parked in the downtown section. He was convicted and sentenced to three years in the penitentiary. His lawyer was Jesse James, Jr., son of the noted bandit. Young James practiced law in Kansas City for nearly twenty years, and then went to Hollywood where he has been ever since. He has appeared in a motion picture or two. His father was killed by the Ford brothers at St. Joseph in 1882 for a reward of $5,000.00 offered

by the State of Missouri, through Governor Crittenden, its Governor. Young Jesse grew up in Kansas City, studied and practiced law there until he went to California.

After the Thompson conviction, young Jesse came to my office and told me he was going to California and introduced me to Thompson. He requested that I appeal the case to the Supreme Court of Missouri, and represent Thompson, which I did. Thompson claimed he bought the automobile from a man named Carpenter and he had a bill of sale executed by Carpenter, acknowledging the payment of $650.00 in cash, for the purchase of said automobile. Carpenter did not appear at the trial and it was proved that Thompson had changed the license numbers of the motor, and had substituted another body for the original one on the car. The jury was convinced that he was guilty and so found. It was a close question as to his guilt or innocence, but the Supreme Court held that the verdict of the jury was supported by substantial evidence and affirmed the judgment. While the case was pending in the Supreme Court, Thompson was arrested in Kansas for stealing an automobile and was sentenced and went to the penitentiary there.

At this same period of time, I was engaged in a matter of interest and concern to people generally throughout the state. Prior to 1920, the salaries of prosecuting attorneys in Missouri were fixed in accordance with the population of the counties, which was arrived at by multiplying the highest vote cast at the last general election by five. In 1920, woman suffrage was adopted and the vote in each county doubled which

gave them twice the salaries previously received. The legislature of 1921 amended the law requiring the highest number of votes cast to be multiplied by three instead of five; thus reducing the salaries one-half. All prosecuting attorneys in the 114 counties arranged a test case, alleging the act of 1921 reducing their salaries, unconstitutional, and claimed the higher salary. They submitted the case to the Supreme Court, which decided against them and held the act of 1921, reducing their salaries, constitutional.

Several of my personal friends were prosecuting attorneys in their counties and they came to Kansas City to consult me about securing a rehearing and handling the matter for them. I filed a motion for rehearing which was granted, re-briefed, and re-argued the case. The court reversed itself and held the act of 1921 unconstitutional and invalid, because it was in conflict with Section 12 of Article IX of the Constitution of Missouri, requiring all laws to be uniform in their operation.

The prosecuting attorneys received back pay in the sum of about half a million dollars, which had been held pending a final decision. I made no charge for this service, because of its public character, and many of the prosecuting attorneys in the state were friends of mine. I was glad to help right the wrong that had been done them.

The printing contracts case was another in which more than local interests were involved. There is a large printing plant at Jefferson City in the state capitol, which is usually successful in bidding for all state printing. When the Democrats are in control of the state,

the printing plant is usually owned by a Democrat, and when the Republicans are in control of the state, by a Republican. The ownership changes according to political complexion.

The State Highway Commission, a separate constitutional branch of the state government, contracted with the McKinley Publishing Company of Kansas City, to do its printing at a greatly reduced price. The State Auditor refused to approve the bill for such printing on the ground that such commission could only have its printing done at the state capitol. I was employed to represent the Kansas City concern to collect payment for printing done, and private counsel Wilfley, Williams, McIntyre & Nelson, of St. Louis, were employed by the state printer. The case was submitted to the Supreme Court. That Court held the commission had the right to have its printing done where it saw fit and ordered the Auditor to pay the bill. Five of the seven judges agreed to the opinion, one dissented, and one did not sit, because he was Attorney General at the time the printing was done.

The Attorney General's office had not participated in the litigation but joined the private attorneys for the state printer in a motion for rehearing, which was granted. When the case was re-argued, only one judge stood with the original opinion and five judges reversed the former opinion, and required the commission to have all of its printing done by the state printer. The case was first won, then lost. Strange things are sometimes done in courts, as elsewhere, but a lawyer falls only to rise, and when baffled, only fights the harder. If he did not he would soon cease to be a lawyer.

XVIII

WILLIAM ROCKHILL NELSON—KANSAS CITY AIRPORT—MUNICIPAL WATER PLANT

Kansas City little realized its good fortune when William Rockhill Nelson, of Indianapolis, chose to make this his home in 1880. Mr. Nelson settled himself, then speedily began a penny newspaper which was destined to become one of the five greatest papers in the United States.

Mr. Nelson died in 1915, leaving all of his property in trust to his wife and daughter, to be sold within two years after their deaths. The proceeds were to be managed by three trustees, the Presidents of the State Universities of Missouri, Kansas, and Oklahoma. The trustees were directed to establish an art gallery in Kansas City and to "select works or reproductions of works of artists who have been dead at least thirty years at the time of the purchase of same." The widow died in 1921, the daughter five years later. Irwin B. Kirkwood, Nelson's son-in-law, survived his wife only one year. The wills of Mrs. Nelson, Mrs. Kirkwood and Mr. Kirkwood contained the same provisions as the Nelson will. In addition, the will of Mrs. Nelson directed that the home "Oak Hall" be razed by said trustees and all of the furnishings, ornaments and other

contents, be sold to strangers living more than 250 miles from Kansas City.

The *Kansas City Star,* the penny newspaper started by Mr. Nelson, was purchased by the employees of the paper for about eleven million dollars and is now being operated by them. An attempt was made by outsiders to purchase the paper, and the matter was litigated in the courts. The city administration and the public generally were in favor of the purchase by the employees, because they constituted the working family of the paper. They have fulfilled their trust, for the paper has been a tremendous success.

The will of Mr. Nelson also provided that the three trustees should operate his stock-breeding farm, located just east of Kansas City, for a period of thirty years. Known as the "Sni-A-Bar" farm, it was to be operated "for the purpose of material and social betterment of the people, and particularly the people of said Sni-A-Bar township, and to promote and instill a better knowledge among them concerning stock-breeding and raising, especially of cattle." This experimental farm is still in operation and has provided invaluable aid to the cattle industry in the Middle West. It is to be hoped that the purchaser of the farm will carry out Mr. Nelson's ideas.

That William Rockhill Nelson was the outstanding citizen in this part of the country cannot be questioned, and he will probably be remembered longer than any man who ever has lived in the Middle West. He was offered many positions of trust by the Government, but always refused them because he seemed to have a horror of politics. I handled the legal work

necessarily involved in the acceptance of the trust by Kansas City, and conferred with Mr. Kirkwood many times before his death in 1927. It took several months to adjust the legal difficulties, but today, Kansas City has, through the generosity of Mr. Nelson and his family, one of the greatest art galleries in the United States, and a trust fund sufficient to perpetuate it throughout eternity.

After the Lindbergh flight to Europe, everyone in America became "air-minded." Everywhere, cities wished to build and maintain airports. Kansas City and St. Louis were not exceptions. In 1927, people of the two cities approved a bond issue for a large sum of money to purchase, equip and maintain airports. There was great rivalry between the cities to establish airports on a well-established route, as each city knew that airports used by cross-continent airlines would increase the standing of the city in which they were located.

The charter-makers of neither Kansas City nor St. Louis had visioned the possibility of an airport or of air travel. As a consequence, they had neglected to state specifically in the charters, that a city could vote bonds to acquire and maintain airports. At the time, there was no case in America dealing with the exact subjects. Therefore, when the two cities attempted to sell their bonds, they were informed that no banking house would buy them until they were validated by an opinion from the Missouri Supreme Court. The two cities concluded to have a test case filed to determine whether or not a city could obligate its revenues by the sale of bonds, in order to secure sufficient money to

build and maintain airports. George S. Logan, a prominent attorney of St. Louis, was very "air-minded" and had written several articles on "air law." It was decided that he would bring a suit to enjoin St. Louis and Kansas City from selling the bonds, because the cities had no authority to issue and sell bonds for such a purpose. Strange to relate, he hoped to lose the suits he brought, because he was strongly in favor of the bond issues.

The City Counselor's office of St. Louis joined with me, and the test suit was filed. The lower courts of both cities found the bond issue valid, and held that the cities had a right to issue bonds to purchase, equip and maintain airports. An appeal was taken to the Supreme Court of Missouri, and both cases were argued and submitted at the same time. Shortly thereafter, that court held against the two cities, and they were denied the right to issue and sell bonds for airport purposes.

I prepared a motion for re-hearing and in company with Julius T. Muench, City Counselor of St. Louis, took the same to Jefferson City, where the Supreme Court met. Upon arriving, I went to the office of Judge William T. Ragland, who had written the opinion against the cities, told him that we were filing a motion for re-hearing, and that the matter was of such importance that we thought the court should grant a re-hearing, and set the case down in two weeks for reargument. I further stated that if this were done, we would convince the court that its opinion was wrong. He readily agreed and upon a re-hearing, the two cities were sustained, the bonds were sold and today each city has a magnificent airport.

A strong judge never hesitates to talk to lawyers about

his opinions, because he knows that in final analysis he will decide the matter as he sees it. Judge Ragland was one of the old-time judges in Missouri; he was approachable on any subject and he would freely discuss any matter with an attorney. He knew that he could not be unduly influenced. Some judges are afraid of themselves, and do not wish to talk to counsel for either side of a question. I have often thought that were I a judge of an appellate court, I would place a sign outside of my chambers, reading as follows:

> "This court is very proud of its opinions and anyone disagreeing with them will please come in and tell me about it."

Then, if a lawyer felt aggrieved at my opinion, I would discuss the matter with him. However, if I had studied the case carefully, and worked hard on the opinion, he would have great difficulty in persuading me to change my views. The principal difference between the modern-day judge and the judge of forty years ago is that the judge of today refrains from associating with lawyers, and lives more or less of a hermit's life. The judges of other days met and fraternized with lawyers at every opportunity, and were never afraid of being unduly influenced.

Kansas City, Missouri, built a municipal water plant in Kansas City, Kansas, with the understanding that it would be exempt from any form of taxation. The Supreme Court of Kansas, however, held that it was not exempt from taxation. Thereafter, in March 1921, the

two cities entered into an agreement which was ratified by the Kansas Legislature, the Missouri Legislature, and the Congress of the United States, relieving said property of Kansas City, Missouri, from any form of taxation, and also relieving similar property of Kansas City, Kansas, located in Missouri, from taxation.

No effort was made to tax the property of Kansas City, Missouri, thereafter until the city stated that it intended to build a new and modern water works plant in Clay County, Missouri, at a cost of about twenty-five million dollars. When this plant was built, the city prepared to sell and abandon its property in Kansas. Therefore, the Fairfax Drainage District, a quasi corporation, levied a tax against Kansas City, Missouri, for the value of its municipal plant. The general understanding had been that neither the state of Kansas, nor any county, township, or municipality, in the state would ever assesss or attempt to collect any tax against the municipal plant. The question arose then as to whether or not a drainage district came within the defition of "a municipality." Many quasi corporations in Kansas could have assessed taxes against the water plant in Kansas and if the compact or treaty was held invalid, it would have made Kansas City, Missouri, liable for the tax on all of its property in Kansas. Kansas City, Missouri, refused to pay the assessment and suit was instituted by the drainage district in the Federal District Court in Kansas City, Kansas. Judge George T. McDermott found against Kansas City, Missouri, and held that its property in Kansas was subject to taxation. The city appealed the case to the tenth Circuit Court of Appeals and it was fully briefed and argued at Denver. In an

opinion written by Lewis, Circuit Judge, and concurred in by his associate, Judge Cotterel, such treaty was held valid and the tax was set aside.

Judge Phillips dissented and wrote an opinion holding Kansas City, Missouri, liable for taxes on its property located in Kansas. Both parties apparently entered into the treaty in good faith and it was clearly intended that none of the property of either state be taxed in any way. Had the tax assessment been sustained, it would have cost Kansas City, Missouri, a great amount of money, for it had operated the plant in Kansas City many years. Kansas City, Missouri, now has one of the finest municipal plants in America, and has disposed of all its property in Kansas.

While Kansas City, Missouri, was operating the water plant in Kansas City, Kansas, an employee of the plant brought a suit against Kansas City, Missouri, in a Kansas court. He alleged that he had been wrongfully discharged as an employee in the plant and sought to recover $2,500.00 in back pay. Notice was served upon an employee of the water plant in the state of Kansas, but such notice was not called to the attention of Kansas City, Missouri, and it had no knowledge that the suit had ever been instituted. A default judgment was taken against Kansas City, Missouri, in the sum of $2,500.00. Thereupon, the city learned of the suit and went into the Kansas court to file a motion setting aside the judgment because it had not been served with notice, and asking for a new trial. The lower court denied any relief, and affirmed the judgment.

The city appealed to the Supreme Court of Kansas on the theory that the municipality of one state may not

be sued in the courts of another state. The Kansas Supreme Court sustained the judgment, and held that Kansas City, Missouri, should pay such discharged employee $2,500.00, with interest. The City Counselor who preceded me filed a motion for re-hearing in the Supreme Court of Kansas. It was denied. The city applied to the Supreme Court of Kansas for a writ of error to the Supreme Court of the United States. It was granted and the case became lodged in that court.

I never learned of the suit until I was notified by the Clerk of the Supreme Court of the United States that it had been docketed for argument. Upon investigation, it developed that no Federal question had been raised by the city until it was raised in the motion for a re-hearing before the Supreme Court of Kansas. No appeal lies from the Supreme Court of the state to the Supreme Court of the United States unless a Federal question has been raised in the pleadings, and the general rule is that a Federal question must be raised at the first opportunity and kept alive throughout the case. I realized, of course, that the important question in the Supreme Court of the United States was whether or not a Federal question had been raised in time.

I went back to Washington to argue the case before the Supreme Court and, knowing how jealous that court is of its jurisdiction, I immediately notified the court on argument that the most important question was whether or not a Federal question had been raised in time. Thereupon, Justice Vandeventer asked me when it had first been raised. I explained to him that it had been raised in the motion for re-hearing before the Supreme Court of Kansas. He immediately replied that that was

too late, and the Supreme Court had no jurisdiction. I told him there were three well-defined reasons why that court should assume jurisdiction, even absent the raising of a Federal question. He asked me to name one of them. I replied that when the Supreme Court of Kansas itself granted an appeal to the Supreme Court of the United States, it was a recognition by that court that a Federal question was involved. In a loud tone of voice, he replied that there was nothing to that point, and asked me my next one. I suggested that where a Federal question is necessarily involved, to the extent that the Kansas Supreme Court could not write an opinion without considering it, that vested jurisdiction in the Supreme Court. He looked at me intently, but said nothing.

I then gave the third reason as being that where a Supreme Court of a state writes upon a Federal question, and discusses it, whether or not it has been raised, it is a recognition of the existence of a Federal question and the Supreme Court should take jurisdiction. Vandeventer replied in a loud tone of voice that there was nothing to that point. He had not expressed an opinion on the second point and in a facetious way I remarked, "Then your Honor likes my second point?" He replied this time in an exceedingly loud tone of voice that he didn't like *any* of my points, and didn't think the case had any business before the Supreme Court. By that time, the rest of the court was highly amused and I replied, "If four other judges of this court are of the same opinion as you, Mr. Justice Vandeventer, then there isn't any use in proceeding further. I might

as well return to Kansas City." Mr. Chief Justice Taft, who had a great sense of humor and who had chuckled throughout the whole procedure, gathered the court around him, talked with them a minute or two, and then in a very charming manner, as if not to hurt my feelings, said, "The Court has determined that a Federal question was not raised in time, and this Court has no jurisdiction." I thanked him, came back to Kansas City, and we paid the judgment.

In 1921, the Republicans elected all state officers in Missouri, and as the Legislature did not redistrict the state senatorially, the Governor, Secretary of State, and Attorney General redistricted it and changed practically all the senatorial districts in the state.

Under the Constitution, it is the duty of the Legislature to redistrict the state every ten years after each national census. If the Legislature fails to do so, then the three named state officials are required to do it within thirty days. Accordingly the said officers did redistrict the state, and as it was thought by the Democratic party that such redistricting was altogether too favorable to the Republican party, a suit was filed to test the right of these three state officers to redistrict. It was contended by the Democrats that when the people voted the initiative and referendum provision into the Constitution of Missouri in 1908, the power of the said three state officials to redistrict the state was taken away from them; that this power was left only in the Legislature, and in the hands of the people through the initiative. The Constitution of 1875 set out the senatorial districts in the state. These had been changed in 1891 and 1901.

There is a general understanding throughout the

United States that redistricting is always partisan, and in favor of the party in power. Such acts are called a "gerry-mander," named for a gentleman named Gerry, who lived and connived many years ago.

The Republicans in Missouri had complained ever since 1901 that the senatorial districts were unfair, and attempted to remedy this by the action of said three state officials after the adjournment of the Legislature in 1921. The Democrats thought this last redistricting partisan and unfair, and attempted to prevent it from going into effect.

At the request of the Democratic State Committee, I became associated with several other lawyers for the purpose of attacking such redistricting. I assisted in writing the brief, and made one of the arguments in the Supreme Court. Honorable Jesse W. Barrett, Attorney General, and Honorable Merrill E. Otis, Assistant Attorney General, appeared in support of the redistricting. The court at that time consisted of four Democrats and three Republicans. Much bitterness developed. The opinion was finally written by Judge W. W. Graves, a Democrat, and held that the three state officials had no authority to redistrict the state, as such authority was taken away from them by the amendment of 1908, and that such redistricting was void, which left the senatorial districts as provided by the revision of 1901.

Judge Graves was joined by his three Democratic associates, James T. Blair, A. M. Woodson and R. F. Walker, while the three Republican judges, Edward Higbee, David E. Blair, and Conway Elder, dissented, and each of the dissenting judges wrote a separate opin-

ion. Judge Higbee, after discussing the law, paid his respects to the political aspects of the situation and charged that the opinion was political, as had been many other opinions of the Supreme Court of Missouri. This was one of the most courageous opinions ever written by a Missouri Supreme Court judge. He had practiced law in northeast Missouri for many years and was an outstanding lawyer. I knew him intimately and tried many cases with and against him. He had two sons, each of whom was a Circuit Judge in different circuits, and one of them, Walter Higbee, is now Circuit Judge of the district comprising Schuyler, Scotland and Clark counties.

I believe the Graves' opinion was right, but it was unfortunate that it was supported only by Democratic judges and I cannot refrain from quoting a few excerpts from Judge Higbee's dissenting opinion. He said:

> "Perhaps we may better understand the majority opinion, running, as it does, counter to all the canons of construction (except emergencies like the present), by referring to a few of our early decisions and political cases. Shackled as we are with partisan bias and prejudice, it is humiliating to confess that even judges in our highest courts are unable to divorce law and politics. In emergencies, great and small, they have heard the Macedonian cry, and have not been disobedient to the call."

Then he quoted from several opinions which he claimed were political, and at page 627, said:

"A superficial reading of the opinion in these and other cases might lead one to conclude that they are inconsistent. But when we consider that in each instance, the Republican was ousted—the end to be attained—we see at once that they are all harmonious."

And at page 630:

"Of course this court has the power to arbitrarily override the Constitution, but I solemnly protest against this monstrous wrong. When it is apparent that our rulings are tossed about like a football to meet political exigencies, we shall justly merit public contempt."

And in closing:

"The foregoing is, in part, the record of this court in cases involving political issues. I feel that the people of Missouri are entitled to read this record. I have said nothing in unkindness, nor set down aught in malice."

XIX

FIRE INSURANCE LITIGATION

In 1922, the Superintendent of Insurance, Ben C. Hyde, who was the brother of the then Governor, Honorable Arthur M. Hyde, ordered a 15% reduction in fire insurance rates, under a state rating act, authorizing the Superintendent of Insurance to order a reduction in fire insurance rates whenever in his opinion, and upon investigation, it develops that they were too high.

Thereupon, the insurance companies enjoined the Superintendent in the state court at Jefferson City to prevent such reduction from going into effect, alleging the order had been made without any notice to them, and they were, therefore, denied due process of law.

An agreement was entered into by all of the stock fire insurance companies, about 156, and the Superintendent of Insurance, that the reduction of 15% would be set aside, and the Superintendent would hold hearings to determine the reasonableness of rates, and if at the end of such hearings he ordered a reduction, the insurance companies would not apply for an injunction, but would proceed for review through the state courts. Pending such review, they would charge the higher rate and retain and keep in their possession such excess, and if, in the end, a court of last resort decided in their

favor, they would keep such excess premiums, but if the decision was against them, they would refund such excess to policy holders whose names they would keep in their records; that they would execute a million dollar bond, guaranteeing faithful performance of such distribution.

The Superintendent conducted an investigation and in October 1922, ordered a reduction of 10% which would amount to a saving to insurers of about three million dollars annually. The companies filed a review proceeding in the State Circuit Court at Jefferson City and secured an *ex parte* order, allowing them to collect the excess during review, and directing them to refund it to policy holders if they lost.

The Attorney General, Honorable Jesse W. Barret, a very able man, and his assistant, Merrill E. Otis, later one of the Federal Judges for the western half of Missouri, signed the stipulation, but the Attorney General concluded that he would not appear for or represent the Insurance Department any further, and thereupon the Governor and the Superintendent of Insurance employed Mr. Floyd E. Jacobs, of Kansas City, and myself to represent the Insurance Department in an attempt to sustain the reduction order. The insurance companies were represented by the leading firm of fire insurance attorneys of the United States, Bates, Hicks & Folonie, of Chicago, and they associated with them an outstanding southern firm, Cockrell & Armistead, of Little Rock, Arkansas, who had represented the companies in rate litigation in that state, and also the well-known firm of Leahy, Saunders & Walters, of St. Louis, and the likewise well-known firm of Hogset & Boyle, of Kansas City.

Judge John I. Williamson, of Kansas City, a former member of the Supreme Court of Missouri, was named Commissioner to take testimony. Testimony was taken for about two years throughout the United States, primarily in New York City, Hartford, Chicago, St. Louis, Kansas City and Jefferson City. The record was voluminous and consisted of thousands of exhibits and the testimony of hundreds of witnesses. The parties differed on the method of calculation to establish a profit and loss. The insurance companies contended that the proper method was earned premiums and incurred loss and expenses.

The statute provides for a five-year test previous to the investigation, and so the period selected was from 1917 to 1921, inclusive. Thereupon, the companies showed the amount of premiums taken in during that period, the amount of losses and expenses paid, but contended they should not account for all of their premium income, but only premiums which they had earned during that period; and that they should be allowed as an offset, not only the losses and expenses which they had paid, but the losses and expenses which they had incurred. Although they had taken in more than seventeen million dollars in premiums, they claimed they should be charged with only nine million dollars, as they earned only those premiums. The state contended that the proper method for figuring profit and loss was to charge the companies with all of the money which they had taken in by way of premiums during the period and to credit them with all of their paid losses and expenses. On the theory of the companies, they had lost about seven million dollars in Missouri during the pe-

riod, while the state contended that, in fact, they had earned about eight million dollars and that such earnings were excessive, and gave them a much greater return than they were entitled to.

At the end of the hearing, the Commissioner wrote a very long and able opinion, sustaining the companies in all of their contentions, and deciding every issue against the state.

Exceptions were filed by the Insurance Department before the Circuit Judge at Jefferson City, Honorable Henry J. Westhues, who is now a commissioner of the Supreme Court of Missouri. He sustained the Commissioner and set aside the reduction order, and allowed the companies to retain the excess premiums collected.

We appealed the case to the Supreme Court of Missouri. It took many months to prepare the record for appeal, and when it was all boiled down, it made four large volumes. It was briefed and argued before the Supreme Court and a decision prepared by one of the judges sustaining the Commissioner and the Circuit Judge, and deciding against the state and in favor of the insurance companies. However, such opinion did not receive a majority vote of the Court, which consisted of seven members, and was thereupon reassigned to Judge John T. White, who wrote a very able opinion sustaining the Insurance Department in all of its contentions, and deciding every question against the insurance companies. Judges Graves, Walker and Woodson concurred in this opinion and Judges Ragland and Blair dissented, and the remaining Judge, Honorable Robert W. Otto, having been Attorney General during a time that the litigation was pending, refused to sit.

The insurance companies filed a motion for rehearing, which was overruled, and they thereupon employed Honorable Charles Evans Hughes, who had formerly been a member of the Supreme Court of the United States, as one of their attorneys and filed an application for a writ of certiorari to take the record to the Supreme Court of the United States. We resisted this application because it did not go as a matter of course, but the Court granted the writ, and it was set down for argument before the Supreme Court of the United States. It was fully argued by Judge Hughes for the insurance companies and by Mr. Jacobs and me for the state. The Supreme Court of the United States considers briefs and records very carefully before argument and it is, therefore, well informed as to the issues involved and knows the questions which they care to have discussed.

In those days, one was never allowed to make an uninterrupted argument, although each side was given one hour. The time was extended in our case and Judge Hughes was interrupted a few times, and finally he concluded his very able argument.

I was given one hour to argue our side of the case, but never succeeded in making more than a minute's statement when the Court commenced to ask questions and I remained on my feet throughout the rest of the argument, answering questions of the Court. This procedure has been criticized by a great many lawyers, who believe they should be allowed to argue their own case in their own way, but on the whole I think it is one of the finest methods that can be found for getting at the facts, because before the argument is over, the Court

understands the views of both parties and is ready to vote.

Some of the judges ask questions in a pleasant way, others seem to take delight in embarrassing lawyers. Some questions are hard to answer, because you do not know what is in the judge's mind, but all lawyers know that every question asked by the Court must be answered honestly and frankly, and the slightest attempt to withhold any information from the Court is met with a rebuff. Such procedure is not embarrassing to a lawyer who knows the record, and no lawyer should appear before that Court unless he is thoroughly familiar with every single thing contained in the record, and able to point it out when requested to do so.

I like this practice very much because I have never believed that a Court can properly understand a case from the argument alone unless it has read the record before argument.

The opinion of Mr. Justice Butler was to the effect that no Federal question was involved and that the case was improperly taken to the Supreme Court of the United States, thereby leaving the judgment of the Supreme Court of Missouri in favor of the state, as final.

This should have ended the litigation, but all such fire insurance companies immediately went into the Federal Court for the Western District of Missouri to secure an injunction against the Superintendent of Insurance and the Attorney General from enforcing this reduction and again pled confiscation and asked a review by the Federal Court of the questions previously decided. They also asked that a three-judge court be assembled as the law provides, where an act of a state

Legislature is claimed to be unconstitutional. Thereupon, the Federal Judge granted temporary injunctions and a three-judge court was assembled, consisting of one Circuit Judge, Honorable Kimbrough Stone, and two District Judges, Honorable Albert L. Reeves, of Kansas City, and Honorable F. E. Kennamer, of Oklahoma.

I filed a motion to dismiss for want of equity, alleging that the insurance companies could not enter a court of equity and ask relief until they had made restitution by returning all of the impounded funds then amounting to more than ten million dollars; and that as a price for another hearing, they should make full restitution. The matter was briefed and argued and Judge Kimbrough Stone wrote the opinion of the Court, sustaining our position, and denying the companies any relief until they had made restitution and ordering all of the cases dismissed.

Under the law, the companies were entitled to a direct appeal to the Supreme Court of the United States from a three-judge opinion, and the matter was taken by them to the Supreme Court of the United States. There it was fully briefed and argued by Mr. Robert J. Folonie, of Chicago, for the insurance companies and by Mr. Jacobs and myself for the state. Again, we devoted most of the time which was given us to answering questions and Mr. Justice Butler wrote an opinion sustaining the three-judge court, and refused to grant any relief to the insurance companies.

Justice Butler had been a great corporation lawyer in the northwest and, for many years, attorney for the Hill interests. He represented the railroads in many rate

matters and it was currently stated when he was appointed by President Harding to the Supreme Bench, that he agreed never to participate in the hearing of a rate case. Whether this was true or not, I do not know, but he did write the two opinions in the Missouri Fire Insurance rate litigation and both of them were deciding in favor of the state. Personally, I had known Justice Butler for many years and felt very kindly toward him. On one occasion, while I was in Washington, with my daughter and her husband, I asked permission to bring them to his chambers, which he readily granted, and we visited with him for over an hour. He delighted to talk to lawyers from the middle west and was usually courteous to them.

The companies, having exhausted every legal remedy, finally were forced to put the 10% reduction in effect, which they did in August 1929, and then they started out to refund about thirteen million dollars of excess premiums which they had collected from the policy holders and retained during the litigation.

In June 1930, it appearing to the Governor of the state, Honorable Henry S. Caulfield, and his Superintendent of Insurance, Honorable Joseph B. Thompson, that the insurance companies had not refunded to policy holders the entire excess collections because the companies had failed and refused to make a report as to their distributions to either the Superintendent of Insurance or to the Circuit Court of Cole County, where the litigation was initiated, they employed Mr. Jacobs and me to institute a suit to recover from the insurance companies the amount of money which they had collected in excess of the legal rate, and which they had not re-

funded to policy holders. We did not know the amount of money retained by the insurance companies, but felt sure there were many thousands of policy holders that had disappeared and could not be found, and there would naturally be a large sum of money left in the possession of the insurance companies.

I first filed a motion for restitution in the Supreme Court of Missouri, because when it had decided in favor of the state and against the insurance companies, it had dismissed the proceedings there instead of sending the case back to the Circuit Court for dismissal. Naturally we thought that the Court, having dismissed the proceedings itself, retained jurisdiction to make any orders looking toward restitution. The Supreme Court twice denied our motion without writing an opinion, but upon request Judge Atwood, speaking for the Court, wrote an opinion denying us any relief. We filed a motion to set his opinion aside, and for a rehearing, which was granted. He then wrote an opinion sustaining the state and held that restitution was due the policy holders, and that it could be ordered by the Supreme Court of Missouri, but inasmuch as most of the records were in the Circuit, restitution could likewise be ordered there, and relegated us for further relief to the Circuit Court of Cole County.

We then filed one independent suit in the Circuit Court upon behalf of the Superintendent, asking for restitution, and an accounting; and also two motions in the Circuit Court asking for restitution. The companies then removed the case and the two motions to the Federal Court for the Western District of Missouri at Kansas City. We filed a motion to remand to the

state court on the ground that these motions were not original suits, but only ancillary to the main case, and the main case being within the jurisdiction of the Circuit Court of Cole County, it also had jurisdiction to award restitution.

We briefed and argued the motion to remand before Honorable Albert L. Reeves, District Judge, and he finally handed down an opinion denying our motion to remand and retained jurisdiction in the Federal Court. We didn't believe we could recover in a court other than the original one, and felt if this opinion prevailed, there could be no recovery, and the insurance companies would keep all of the impounded premiums which they had not refunded, although they did not belong to them. We filed a motion to set aside his opinion and briefed the matter fully again, and Judge Reeves wrote another opinion, sustaining the state and ordered the motions remanded to the Circuit Court of Cole County for further proceedings.

There were 156 insurance companies involved, scattered throughout the United States, and in foreign countries, and we knew that the state would not be able to finance a suit for accounting, as it would take years of time and the cost would be prohibitive. We sued the companies for all of the money which they had wrongfully collected, which we were able to show from the records of the Insurance Department. We also asked for interest from the date of the collections, aggregating in all about eighteen million dollars. We knew that the insurance companies had refunded a great portion of this money, but did not know how much they had refunded, and asked that they be given credit upon a

showing in the Circuit Court of Cole County for all money which they had distributed to policy holders; and that they be required to pay the balance into the registry of the Circuit Court for distribution, with 6% interest thereon.

This matter came on for hearing in May 1933, before Honorable Nike G. Sevier, Circuit Judge at Jefferson City. The companies at that time were represented by Hicks & Folonie, of Chicago; Igoe, Carroll, Keefe & Higgs, of St. Louis; Ragland, Otto & Potter, of Jefferson City, and Morrison, Nugent, Wylder & Berger, of Kansas City.

We were able to show from the records in the Insurance Department the collections during the period, which amounted to about $13,500,000.00. The Circuit Court rendered judgment against all of the insurance companies for the total amount of their collections with interest at the rate of 6%, amounting in all to about eighteen million dollars; to be satisfied by the companies making a showing to that Court as to what their total collections were, what they had refunded and the amount left unrefunded, and that upon payment of that amount into the registry of the Court with 6% interest, the companies would be fully released from any further liability. The Court thereupon appointed commissioners to take testimony to determine what amount was due. The companies applied to the Supreme Court of Missouri for a writ of prohibition, alleging the Circuit Court was without jurisdiction to order restitution, and that it would be prohibitive to execute a bond in double the sum of the judgment, as it would amount to thirty-six million dollars.

A preliminary rule in prohibition was issued by the Supreme Court of Missouri and the matter set down for argument. Judge William P. Frank wrote a very able opinion for the Court, and denied a permanent writ of prohibition, and sustained the Circuit Court in all of its rulings.

The insurance companies then made their reports to the Commissioners as to the amounts collected and refunded, and it was finally adjudged that they owed $2,751,000.00, which they were adjudged to pay, of which $857,000.00 was interest. They paid this sum of $2,751,000.00 to the Commissioners of the Circuit Court and fully relieved themselves, and the same was later turned over to the Superintendent of Insurance, where it now remains, less about $500,000.00 paid to policy holders, and the expense of the administration of such fund. This money will ultimately go into the Treasury of the State of Missouri.

XX

LASSON AND HINTON CASES

A charge was filed in the Criminal Court at Kansas City against Laurence Lasson on June 2, 1922, by the Prosecuting Attorney, charging him with robbery in the first degree. I defended him.

The office of the Carnes Artificial Limb Company was on East 12th Street. On the morning of May 22, 1920, the President of the company, John P. Prescott, and its cashier, Mrs. W. A. Huddleston, obtained from the First National Bank $2,063.00 with which to discharge the weekly payroll. The money was placed in a leather bag and delivered to Mrs. Huddleston. She and Prescott were then driven to the office by a negro chauffeur. As they got out of the car, two men appeared on the sidewalk, grabbed the bag, and fled with it. Mrs. Huddleston identified Louis Thompson as one of the men, but was unable to identify Lasson. Prescott positively identified Lasson as the man who grabbed the bag. The colored chauffeur was unable to identify either one of them.

The defense was an alibi: That Lasson was at home sick the entire day and did not leave the house. Six witnesses testified to that fact. There had been a great many robberies in Kansas City and feeling was very

high. Lasson was convicted and sentenced to serve a term of ten years in the Penitentiary. His trial was between those of two notorious robbers, both of whom were undoubtedly guilty.

At the trial, Lasson was examined as to whether he had been engaged in bootlegging whiskey, whether he had been running a gambling place, and selling liquor without a license.

His wife was examined as to whether she had lived in adultery with her husband two years before they were married, which was seven years before the date of the trial.

The case was appealed to the Supreme Court of Missouri, the judgment reversed, and the case remanded for a new trial because one's character cannot be attacked by showing specific acts, but only by the general reputation in the community. The Court held it was error to ask Lasson about these other offenses, with which he was not charged; and that it was error to interrogate his wife as to her conduct seven years before the trial. In holding that long forgotten scandals could not be inquired into, where there is no connection with the charge, because one is entitled to oblivion as to his past, the Court said:

> "A witness should not be required to give such testimony when it does not tend directly to prove some issue.
>
> "And the reason is that every man is entitled to such a measure of oblivion for the past as will protect him from having it ransacked by mere volunteers; and aside from this general sanction, if

witnesses were to be compelled to answer fishing questions as to any scandals in their past lives, the witness box would become itself a scandal, which no civilized community would tolerate."

The case was tried a second time, and the jury hung, it being understood that it stood eleven to one for conviction. Officers of the Court have some kind of knowledge as to how the jury stands, although no one is supposed to know, and the Judge kept the jury confined for three days before releasing it. It was then tried a third time and it was rumored the jury stood eleven to one for acquittal, and the jury was promptly discharged. It was tried for the fourth time, and reported that the jury stood eleven to one for conviction, and it was held for two days and two nights, and discharged. The Prosecuting Attorney refused to prosecute further and the case was dismissed.

In 1922, William Hinton was convicted of embezzlement as bailee at Hannibal, Missouri, and was given three years in the Penitentiary. Sometime thereafter, he came to my office in Kansas City, and asked me to represent him on appeal in the Supreme Court of Missouri. I conferred with Berryman Henwood, later a member of the Supreme Court of Missouri, who had represented Hinton in the trial court, and found it perfectly agreeable. I briefed and argued the case in the Supreme Court. Hinton had been an old-time friend of mine when he lived at Moberly, Missouri, and he had a very fine reputation throughout that part of the state.

It appeared that Hinton went into a jewelry store at Hannibal and asked to examine some unmounted dia-

monds, and finally found three which were priced at $1,575.00 and he thereupon bought them by exchanging some promissory notes, not due, of an equal value. The jeweler claimed that Hinton did not trade him the notes for the diamonds, but that Hinton asked permission to take the diamonds to Moberly, where he could have them examined by an expert, and left the notes as collateral, guaranteeing the return of the diamonds if he did not care to purchase them. The jeweler had Hinton indicted for embezzling, as bailee, the diamonds, and Hinton defended on the theory that he bought the diamonds and paid for them with the promissory notes. The jury found him guilty and an appeal was taken to the Supreme Court.

In the meantime, the jeweler had kept the promissory notes and when they became due, they were paid through the bank and the jeweler received the money. Hinton, therefore, stood convicted of embezzling the diamonds and the jeweler had received payment for them. The payment of the notes had occurred after the case had been appealed to the Supreme Court and under the well recognized rule of law, nothing happening after an appeal can be shown.

In order that the Supreme Court might know the notes had been paid and the jeweler had his money, I secured an affidavit from the jeweler stating that the notes had been paid, that he was willing to allow Hinton to keep the diamonds, and did not desire to see him prosecuted further. This affidavit had no place in the record and the Supreme Court was not required to consider it, although everyone knew that it was true. There does not seem to be any way to present happenings after

a trial to an appellate court, but had such facts appeared at the trial, Hinton would have been acquitted. The Supreme Court reversed the judgment and discharged Hinton. There was never any question but that he was innocent. A great injustice was done him, but he was completely vindicated by the Supreme Court.

The Moberly Light and Power Company, at Moberly, Missouri, maintains a power plant and furnishes light to the city of Moberly.

In 1921, Harry Solomon was killed in a private garage in this city by an electric shock, and his wife, whom I had known for many years, employed me to assist Redick O'Brien, a lawyer in Moberly, in a suit against the company for damages. The case was defended by Willard P. Cave, one of the well-known older lawyers in the middle of the state, and Hunter and Chamier, one of the best-known younger firms. The evidence showed that Mrs. Moore owned a garage in her yard which was used by a Mr. Ricker, and that electric light wires ran into the house and to the garage; that at the garage there was one socket and a long cord, which was used all over the garage, which had a dirt floor. The owner of the garage had wired it for electricity about a year before the date of the trial. At about 9:30 one night, the brother of Mrs. Moore was found unconscious under an automobile in this garage. Mrs. Moore immediately called to the neighbors, and the deceased, Harry Solomon, with several others, went over and raised the car, and took Mr. Ricker from the garage. The doctor was called and a discussion arose as to what had happened to Ricker, whether he had been injured by gas or by the car, and the deceased went into the garage with

others to see what had happened. The deceased was in his sock feet and was wearing a hickory shirt. He crossed the yard while there was dew on the grass, and picked up the socket which was attached to the cord and threw the light under the car; suddenly he gave a kind of gurgling sound and continued to hold onto the socket, fell over, and immediately died.

It developed at the trial that the light company had two sets of wires, one carrying 100 voltage, which is the usual voltage allowed to enter a residence, and which furnishes the usual electric light that is used in all communities. They had another wire of 2300 volts, and these wires were on the same poles and ran side by side; that at places the rubber insulation on both of these wires had been worn off and the wires exposed; and people at night for several years had observed a flashing of light in trees where the two wires passed through. The wires passed through about eight or ten trees before they got to the Moore residence. It was shown that when green limbs were broken from a tree, and fell across both wires, the heavy voltage was carried into the lighter voltage wires, and it was the theory that the two wires had come in contact, and 2300 volts carried into the garage, while it was only wired for 110 volts and that, as a consequence thereof, Solomon lost his life.

A great deal of expert testimony was offered, the company contending that he was killed by 110 voltage and the contrary testimony showing that 100 volts of electricity would not kill anyone and that undoubtedly he had been killed by the heavy voltage because of the two wires coming together as stated. This case attracted a great deal of attention and took two or three days to try.

At the conclusion thereof, the jury brought in a verdict for the widow of the deceased in the full sum of $10,000.00. The case was appealed to the Supreme Court of Missouri, and I briefed and argued it in that court and later an opinion was handed down by Commissioner Railey, affirming the judgment. The case was, therefore, ended and the light company paid Mrs. Solomon $10,000.00 with interest.

Both the House and the Senate in the session of 1921 were Republican. The Legislature passed an act creating a municipal court in Kansas City, and abolishing the offices of the eight justices of the peace, all of whom were Democrats. The Democratic organization secured sufficient signers for a referendum petition to suspend this act, and to allow the people to vote on it in the general election of 1922. The act declared that its enactment was necessary "for the immediate preservation of the public peace, healthy, and safety." This was to prevent a referendum. When the petitions were presented to Charles U. Becker, Republican Secretary of State, for filing, he refused to accept them on the theory that the act was immune from the referendum, by virtue of said clause.

The Constitution provides that bills falling within the meaning of this clause cannot be suspended by the referendum. I was asked by the organization to institute a proceeding in the Supreme Court to compel Becker to accept the petitions and to place the question on the ballots at the General Election, which I did. Honorable Jesse W. Barrett, Attorney General, and Honorable Merrill E. Otis, Assistant, appeared for Becker.

Only one township in the entire state was affected by

this act and it was our contention that the peace, health and safety of the citizens of Missouri were not involved in an act removing justices of the peace from one township in the state, and that such removal would be of no state-wide interest, but purely local.

Of the seven members of the Supreme Court, four were Democrats and three were Republicans. The four Democrats voted to require Becker to submit the question for a vote, and one Republican concurred in that view. The two other Republicans dissented. At the election, the people did not sustain the Legislature and the act failed. The justices of the peace therefore remained.

Several years later a suit was filed by the Attorney General to oust the same eight justices of the peace in Kansas City, because in suspending the act by referendum, the referendum petitions did not mention one or two of the sections creating the municipal court, and it was thought these sections were still alive, and repealed the justice act in Kansas City. I was asked to defend that suit, which I did, and our position was that the subject matter before the Legislature in 1921 was municipal courts and justices of the peace in Kansas City; that the referendum intended to protect the justices in the security of their office, and that when a referendum is secured against an act, it covers everything in said act, whether expressly stated or not; that, therefore, the referendum in fact covered the entire act, and when the people refused to sustain said act, all of it passed out of the picture, and the justices of the peace were secure in their office. All of the court agreed with our contention and dismissed the suit and the justices of the peace still remain.

XXI

A NEW CLIENT NAMED TRUMAN

In 1923, I saw for the first time the man who is the President of the United States. Harry S. Truman came to my law office in Kansas City that year to employ me to represent the County Court of Jackson County, Missouri, of which he was a member, and defend a suit brought against the court by the ten circuit judges of Jackson County. He was accompanied by his associate, Judge Henry F. McElroy. Judge Truman explained that in 1919 the Legislature had passed an act making the Circuit Judges members of a Parole Board, and at the same time placed the control, management, and operation of all county institutions in their hands. Prior to that, such institutions were maintained by the County Court, as provided by the Constitution. The County Court was not a judicial body but rather an administrative body handling the affairs of the county. The County Court refused to approve the payroll and a bill for supplies for these homes on the ground that county business belonged to the County Court and not to the judicial branch of the government.

I accepted the employment, argued and briefed the case in the Supreme Court, contending that the Act of 1919 was unconstitutional as conferring non-judicial

duties upon the judiciary. The Supreme Court of Missouri sustained me and held the act invalid. The County Court then took charge of the institutions and has handled them ever since.

The feeling was very bitter over this lawsuit, and Judge McElroy always said that if he and Judge Truman had lost their fight against the Circuit Judges, they would have had no further political career; that a defeat would have destroyed them politically; that victory in that case made him City Manager and Judge Truman a United States Senator.

The man who employed me in this lawsuit is now the President of the United States of America, and his rapid rise is an inspiration to the youth of this land. His people came to Jackson County, Missouri, more than one hundred years ago. His grandfather fought under the Stars and Bars, and was an unreconstructed rebel. The family suffered all of the hardships of border warfare, and was driven from western Missouri by Order No. 11, which depopulated many counties. The border between Missouri and Kansas, where his people lived, saw fierce fighting, and his mother, who died at 95 years of age, remembered it all very distinctly.

In World War I, Harry Truman entered the service a private, and was mustered out a Captain, commanding Battery D of the 129th Field Artillery. This battery had many hard assignments in that war and he participated in some of the fiercest fighting. Upon returning to Missouri, he operated his mother's farm until his election to the County Court. In the meantime, he had married his childhood sweetheart, of the well-known

Wallace family in Missouri, one of the oldest and most highly respected families in the middle west.

An incident which shows the intensity of feeling of those who remember the border warfare in Missouri, was once related by Truman. One night after his return from France, he put on his blue uniform to attend an Officers' reception in Kansas City. With his wife, he went to his mother's home to tell her good-bye. Upon seeing him in a blue uniform, she closed the door of the house and forbade him to enter, saying she would allow no Yankee uniform in her home.

During the years 1922 to 1924, Harry Truman was a member of the County Court of Jackson County. In 1926, he was elected Presiding Judge of the County Court, and served until he was elected United States Senator from Missouri in 1934. He was re-elected to this office in 1940. During these years, and at the time he was elected Vice-President, he lived in the town of Independence, Missouri, near Kansas City. An average, friendly sort of town, it has been the scene of many events which will go down in history. Producing a President of the United States will perhaps be the most important.

But in 1830, it was selected to be the home of the Mormons. Joseph Smith, the Prophet, came to Independence on foot from St. Louis, a distance of about three hundred miles. At that time, the town consisted of a brick court house and a few log houses. He visioned Missouri as the long-wanted location for the "New Jerusalem," and after a revelation, decreed that "Independence is the centre place, and the spot for the Temple is lying westward, upon a lot which is not far

from the Court House." But the Mormons had trouble with the Missouri citizens as they had with the people in Ohio, and they were evicted from Independence in 1838. The descendants of "The Prophet" later returned to Independence, however, and built a large Temple on the spot selected earlier by Smith. This Temple is within two blocks of President Truman's home.

Franklin Roosevelt will undoubtedly go down in history as one of the world's greatest men, and yet he died before he saw the fruit of his efforts, and before a total victory. President Truman will go down in history as the man who gave the world its greatest peace treaty, which, if he has his way, will prevent future wars. Knowing the horrors of war as only a soldier in the trenches can know them, and being the highly patriotic American he is, the nation can rely upon his judgment in handling the many vexing problems that have arisen since the cessation of fighting. Under his leadership, there is no reason why a splendid permanent peace cannot be made and there is no reason why this country shall not remain a happy and prosperous nation. It will be his life's aim to see that the suffering of the early '30's will never appear again.

President Truman, aside from Lincoln, is perhaps the most humble man that ever sat in the White House. His modesty is unequalled, and yet he is a man of great courage and determination. He never sought the office of Vice-President, was terribly disturbed at the thought of being President of the United States for four years, and yet he is not afraid. Not as well educated from a standpoint of college degrees as his predecessor, for

ten years he listened to the debates in the Senate and is one of the best read men in America. Very few men, if any, are as well versed in American history as President Truman. He knows the United States and its people, and for years has been a painstaking student of international affairs; his was the college of hard knocks.

He is a friendly man, and under no circumstances will he be confused or perturbed. Before he was nominated for Vice-President I saw him at the Arlington Hotel at Hot Springs, Arkansas, when I was addressing the Arkansas Bar Association and he was taking the baths and resting. Governor J. M. Broughton, of North Carolina, the Governor of Arkansas, and Dean Morgan, of the Harvard University Law School, were to be presented at the close of the noon session, and I was asked to get Truman to appear. In company with another lawyer, I went to his room and knocked on his door. Finally he opened it, stood in the doorway in pajamas, with a smile upon his face, and consented to come down. Upon request, I presented him, introducing him as Missouri's Senator, a great man who was unconscious of his greatness. Later, Dean Morgan and Governor Broughton told me their trip to Hot Springs was worth while because they had met Truman, whom they regarded as the most capable man in government life.

The following story illustrates President Truman's frankness and honesty more clearly than weak words ever could do. As Senator, Truman secured the appointment of Richard S. Duncan, of St. Joseph, Missouri, as a Federal District Judge, after a long struggle. Duncan had served ten years in Congress and has made a fine judge. Several lawyers from Kansas City attended

a banquet for him in his home town. I was very much interested in the reaction of Senator Truman when the presiding officer of the meeting began by praising the judiciary highly, as all lawyers do. He went on at great length, saying the Judicial Branch was the most important branch of the Government, overshadowing the Executive and Legislative Branches. Senator Truman, got to his feet, stood facing the assembled crowd, and disagreed very firmly with the presiding officer. He explained that he thought the Legislative Branch the most important, giving as reasons the fact that it is closer to the people, and provides the money to run the Government; that without an appropriation, even the President cannot employ a stenographer or buy stationery; that both of the other branches are dependent upon the Legislative Branch, but that branch is not at all dependent on either of the other branches. And, of course, he was right, as the Fathers undoubtedly intended that branch to be entirely independent, as it is. Truman further stated that he could say anything about judges that he cared to say, because he had NO license to practice law, therefore *no* license could be taken from him; that he could not be sued, because he had nothing. All of this was said in the presence of many judges.

But Senator Truman had . . . and President Truman likewise will have . . . the happy faculty of disagreeing with one, and yet retaining his friendship.

Senator Truman was rocketed into fame while Chairman of the Truman Investigating Committee in the Senate. During World War I, it was alleged that millions . . . perhaps billions . . . of dollars were lost

by waste and extravagance. Senator Truman conceived the idea of checking expenditures at the same time they were being made, instead of waiting until the war's end as had been done before. His committee proceeded cautiously and wisely and saved the United States many millions of dollars, at the same time, increasing production to an enormous extent. Seldom has a committee ever received the praise which his committee received, and it was due entirely to the indomitable efforts of this man.

Truman is the second President from the country west of the Mississippi River, and his views are southern and western. Missouri is perhaps the most conservative of the 48 states, and usually votes as does the nation. President Truman is a conservative with strong liberal leanings. He is a strict party man and believes firmly in the two-party system; that is, in the Democratic and Republican parties. He will not take kindly to visionary plans and patent medicine remedies. His administration is a Democratic one, and historians will liken him to John Quincy Adams and Grover Cleveland. President Cleveland was Sheriff of Buffalo, New York, and a political worker. President Truman belonged to a political organization all of his life, as have nearly all Presidents of the United States. He worked in politics as did all of them. Not one man out of a hundred is ever elected to political office except with the aid of a political organization. President Truman has Cleveland's rugged honesty, and the same desire to do something for his country. He is the President of each of the forty-eight states; and no more tolerant man ever lived.

He is opposed to communism, and all racial and religious discrimination.

While history records that Truman is Missouri's first President, some historians disagree, and cite a series of incidents as the basis for their disagreement. David R. Atchison, Missouri's United States Senator, had the peculiar experience of filling the shoes of a President of the United States for one day. President Polk's term expired on March 3, 1849; President Taylor was to be inaugurated on March 5th because March 4th fell on Sunday. As President pro tempore of the Senate, and having been elected sixteen times to that office, Atchison and many historians have always claimed that the Presidential succession law automatically made him President for that one day. Either the responsibility of the office, or arduous duties just before, made him unusually tired, for like many of his predecessors, and many of those who have followed, he slept throughout his entire term of office.

More than intellectual brilliance, more than cleverness, more than education, Americans appreciate basic honesty. Certainly this country and no country in all recorded time has ever had a chief executive who possesses this fine quality in greater degree than Harry S. Truman. This fact is illustrated by many incidents in his career, only two of which I will mention.

In the early '20's he was studying in the Kansas City [illegible] School of Law. He carried on these studies for [illegible] three years. In those times examination for a license to practice law in Missouri was lax and nearly anyone could be admitted. Truman knew this and knew that he could be admitted even without examina-

tion. He had a very great desire to become a lawyer and could very easily have received his license, as he well knew, but since he did not have all of the technical requirements provided by law, he did not apply for and receive something which he prized and coveted very much, although it could have been his for the asking.

Another instance which is even more illustrative of this point is furnished by the old family farm in Jackson County. Prior to the depression his mother owned a splendid farm of 360 acres about ten miles from Kansas City. His father was dead and his mother an aged woman. In the early '30's she mortgaged this farm for $30,000 at which time it was well worth the amount of the mortgage. As is too well known the depression ruined farm values, and the Truman mortgage, as a result of this depression, could not be paid. While a Senator of the United States, Truman saw this farm, the home of his aged mother, put up at auction and sold for the price of the mortgage. A hundred banks in Missouri would have renewed the loan for him if he had asked them to do so. Thousands of people would have carried such a mortgage for a United States Senator. He did not ask any of them to do this because he did not want to be under any obligation to anybody while he was occupying the responsible position of a Senator of the United States. I wonder how many men prominent in American public life today and in the years that are passed, would have been possessed of the integrity of Truman under these circumstances? I wonder how many of them would have seen the family farm sold at a public foreclosure sale, have seen his aged

mother evicted, when by a mere gesture of his hand he could have prevented it? A happy conclusion of this matter is that since the time of the foreclosure sale, a portion of this farm has been repurchased by President Truman and his mother has returned to her old home.

All Missourians are intensely proud of their fellow citizen who occupies the most powerful position of any man in the world; and who discharges the heavy and innumerable duties of that position quietly, efficiently, and thoroughly. At this crucial period in the history of our country and of the world, we are indeed fortunate to have such a man in such a position. Little did I believe, when he walked into my law office in Kansas City so many years ago, that this new client would one day be President of the United States. I may add that this is the only President that I have ever had for a client. I presume that one is as much as any man is entitled to!

Never since the days of George Washington has there been such an upset as when Harry S. Truman was elected to succeed himself in 1948. Few people gave him any chance to beat the Republican candidate, Thomas E. Dewey, the Governor of New York. All of the newspapers, commentators, columnists, poll-takers, radio chains, magazines and political writers said it was a landslide for Dewey. The famous mystic-psychic Jean Dixon, of Washington, was the only fortune tellers to see Harry S. Truman's face in her crystal ball. All the others saw Dewey. The famous commentator Walter Winchell offered odds of 100 to 1 that Dewey would win. The gamblers offered 25 to 1. Drew Pearson, the noted predictor, lowered his average by predicting

Dewey. Fifty of the most noted political writers saw only Dewey. The newspapers picked his cabinet and notified foreign countries of his election.

But the man from Missouri refused to believe them. He said they were in for a bad awakening the day after the election. He took Bess, his charming wife, and Margaret, his beautiful daughter, and toured the United States on a slow train, speaking at all whistle stops. He would introduce his wife as his boss and his daughter as her boss. That did the job. The people liked them and sang "I'm just wild about Harry." They traveled over thirty thousand miles, and he made over three hundred speeches. Governor Dewey followed him one day behind just like a little sunbeam, scattering sunshine, love and happiness, and chartering the course of this country for the next four years. The people were confused—they thought Dewey was the President and Truman the challenger. Truman lost New York and Pennsylvania and four southern states, and yet he won easily. He did it all himself. He had very little help.

No longer do the Democrats have to carry New York or the solid south. Gallup, Roper, Crossley and the other predictors will disappear, but there will be a new set to predict a Republican landslide in 1952. Truman will belong to the Andrew Jackson school; and if he keeps us out of war and a depression, he will rate with the immortals. I think he will do both. He is rugged, fearless and honest.

XXII

CITY COUNSELOR

In 1925, Kansas City adopted the City Manager form of government, providing for the election of a mayor, four councilmen-at-large, and four district councilmen, each to serve four years. The election was held that fall, and the Democrats elected five councilmen; A. N. Gosett; George L. Goldman; C. Jasper Bell, now a member of Congress; Ira B. Burns, and Charles H. Clark. The Republicans elected the Mayor, Honorable Albert I. Beach, who had formerly held the same office, and three councilmen; H. L. McCune, David B. Childs and Clarence A. Burton. This gave the Democrats a majority of one vote, and they appointed as City Manager, Henry F. McElroy, a former County Judge. I had tried an important case for Judge McElroy when he was on the county bench with President Truman, and he and the Democratic members of the Council asked me to accept the position of Director of Law, in some cities called City Counselor.

The council was a very able one, giving Kansas City four years of the best government it has ever had. This was due primarily to the fact that the members were so close politically. A new Code was prepared but before the newly elected members took office, a suit to

prevent them from doing so was instituted in the Federal Court, on the ground that the City Charter was unconstitutional. Before taking office, I was asked to try the case. Judge Reeves, of the Federal Court, sustained the right of the members of the Council to hold office, and dismissed the suit. Therefore, when we went into office, considerable time was spent in construing the charter, and preparing necessary instructions to the different departments.

I retained only two of the former attorneys in that department, Judge J. C. Petherbridge and Judge E. F. Halstead. I appointed ten other young assistants, all of whom have since distinguished themselves in the practice of law. We had more than our share of successes in the handling of cases for the city, and operated the department at a minimum cost. I served four years and at the next election, the Democratic organization elected the Mayor and all eight of the councilmen. A majority of them asked me to remain in office but I concluded it was time to leave, and resigned.

At the time I took office, there were pending about eight hundred suits against the city by former employees, who claimed they were wrongfully discharged under the charter provisions of 1909. Such suits were in mandamus, to be restored to office, and to collect back pay upon restoration. The city had been defending these suits for eight or ten years, and fifteen times had lost. The higher courts had ordered the city to restore such discharged officers to office and to pay them back salary. The city had paid out something over three hundred thousand dollars in such claims, and every one considered the matter settled, expecting the city to pay all

other back claims. Such claims were accumulating at the rate of about $3500.00 a day, and it was a well-known fact that the city would be bankrupt if it had to pay the ten million dollars claimed. I read carefully all of the decisions against the city, and the Charter provisions and reached the conclusion that such decisions were wrong, that Kansas City should never have paid any of the discharged officers, and should not be required to pay any more.

One of the outstanding legal firms in the city, Williamson, Park & Brown, had most of the claims, and had collected considerable money from the city, although many other Kansas City lawyers had represented clients with claims. John I. Williamson, the head of the firm, was one of the ablest lawyers in the city and had been a member of the Missouri Supreme Court. John C. Park was an outstanding lawyer, and had been judge of the Circuit Court in Kansas City. Darius A. Brown, the other member of the firm, had been Mayor of Kansas City and was later one of its circuit judges. They represented several hundred clients, and had never lost a case against the city.

I concluded that the opinions of the Supreme Court and of the Kansas City Court of Appeals were wrong and felt that relief could come only from the Supreme Court, as the trial court was compelled to follow such rulings. I filed a prohibition suit in the Supreme Court to prohibit all of the ten circuit judges of Kansas City from hearing any more of the cases, on the ground that the city was not liable. The court held that prohibition was not the proper remedy. However, some of the

questions raised by the city were discussed, but no general relief was granted.

There were several cases then pending in the Supreme Court of Missouri, and the first one to come up for argument after I became City Counselor was State ex rel Gallagher vs. Kansas City et al. I took several months in briefing this case, exhausted the law of the United States on this subject and cited authorities in practically every one of the forty-eight states, trying to show that Missouri was out of line with other states and that under no consideration, could any discharged employee recover back pay.

Many of the cases pending arose from the fact that there were two Democratic political leaders in Kansas City, Thomas J. Pendergast and Joseph B. Shannon. Pendergast would have control of one office in the city or county, and Shannon would have control of another. When there was a contest between the two factions, it was a common practice for the Pendergast controlled office to instantly discharge without any trial or hearing or for any cause, all of the Shannon employees and replace them with Pendergast employees. Thereupon Shannon, in control of another office, would discharge all of the Pendergast employees and replace them with the Shannon men discharged from a Pendergast controlled office. In many instances, the change inured to the benefit of the employee and he received more pay. Years later, he would be advised by lawyers that he was wrongfully discharged by the city officials of Kansas City and that he could recover all of his back pay, although the officials had filled the office with another, and even though he had been on the county payroll during the

entire time. It was represented to him that where an officer was wrongfully discharged, he was entitled to his back pay as a matter of course, regardless of what he had earned in the meantime. Thus, the city paid the employee who took the place of the discharged employee and was also paying the discharged employee when he was rendering other work in other governmental capacity.

I briefed the case on the theory that where one is wrongfully discharged by the city, and another person given his place, and thereafter renders service for which he is paid, the city cannot be required to pay again; that the city can only be required to pay for services rendered, and to the man who rendered the services, and that such discharged employee has no remedy against the city but only against the person who occupied his office and received his pay. I said further that the discharge of an employee by the officers of a city was a governmental act for which the city would in no event become liable.

The case was fully briefed by the city but the attorneys for the discharged employees relied upon the eleven previous decisions in their favor by the Kansas City Court of Appeals and the four in the Supreme Court. The city knew, of course, that it was asking the Supreme Court to overrule fifteen opinions which had been written over a period of years. The case was assigned to Judge W. W. Graves of the Missouri Supreme Court, one of the ablest men that ever sat upon that bench. He carefully read the hundreds of cases cited and went into the matter without any prejudice as to the holdings of these other opinions. He finally over-

ruled all of the said previous fifteen opinions and held the city was not liable to any discharged employee, for the reasons assigned by the city. It was a complete victory for the city, disposing of about eight hundred cases, and saving the city about ten million dollars in money.

Upon assuming office in 1926, the new administration found several millions of dollars of back claims against the city which had not been paid, for lack of finances. These claims were held by merchants who had furnished goods to the City Hospital and other institutions, and supplies to the City Hall, and tax bills on property owned by the city. The interest was running at from six to eight per cent, and I advised the City Manager that we should have all of the claims reduced to judgment, in one joint suit, where they would all be assigned to a trustee. We would then issue judgment bonds bearing four per cent interest, for a period of twenty years, payable from the common fund, and discharge the debts. This was done, but the Kansas City banks would not purchase the judgment bonds because, in the past, the general revenues of the city had not been sufficient to support the city's operations. Finally, we secured an approval of the bond issue, and the bonds were sold to a firm at Wichita, Kansas, and have now been paid. The city saved many thousands of dollars in interest and those holding claims against Kansas City were paid.

Prior to 1926, the Street Railway Company of Kansas City had been in receivership for many years, and in that year, it was repurchased by a new company. The franchise under which it was operating had about ten

years to run. In 1927, the Company asked to surrender its franchise and be granted a new franchise for a period of thirty years. This, of course, was of tremendous value to the Street Car Company because it allowed it to refinance and issue long-term securities.

The Supreme Court of Missouri and other courts had previously held that a city and a utility could not contract as to rates; that the fixing of public utility rates was an exercise of the police power of the state under a provision in the Missouri Constitution. This provision stated that "'the exercise of police power of the state shall never be abridged." The courts had also held that the fixing of utility rates being an exercise of police power, a city had no legal authority to contract as to rates, but that the Public Service Commission created by the Legislature of Missouri had the sole authority to regulate rates.

Having these decisions in mind, the city agreed with the Street Car Company as to the valuation of the property and what would be a fair return upon such valuation, and agreed that the Street Car Company should, during the life of said franchise, make certain extensions of its lines, do certain street paving, and other things mentioned in the contract. It was agreed that no increase in rates of fare would be asked for or granted as long as the rates fixed by the franchise ordinance produced a net annual income of two million dollars, plus 8% on new capital expenditures, and not then, unless the cost of operation and material for repairs and maintenance increased in the preceding year to the amount of $100,000.00. However, if cost or cost

prices, receded, rates were to be lowered in the amount and in the manner provided by the ordinance.

The franchise contract was entered into in 1927 and in February 1929, in violation of said contract, said company filed an application for increase in rates with the Public Service Commission. Kansas City thereupon filed a suit in the Circuit Court of Kansas City, seeking an injunction against the Street Car Company and the Public Service Commission, enjoining said company from further prosecuting its application for increase in rates, and enjoining the Public Service Commission from further entertaining said application for increase in rates, on the theory that the right to contract as to valuation was a legal one, and that the company had violated its franchise contractual obligations by refusing to make extension of its lines; do certain street paving; sprinkle, oil and clean certain streets; and pay to the city, certain license taxes. The city knew, of course, that under previous decisions, it could not contract as to rates, but there was no holding that it could not contract as to valuation, and what would be a fair return on such valuation. It also knew that the street car company had not complied with its part of the contract and that ordinarily one cannot ask relief under a contract when in default of its obligations.

The Supreme Court of Missouri missed the point entirely, deciding the case on the sole theory that the attempt was nothing more or less than an effort to regulate rates. It did hold, however, that the city did not have the right to contract as to valuation because they affected rates. It also held that even though the street car company had violated practically every provision of

its franchise, it could still obtain relief as to rates. Such holding, of course, destroyed entirely the franchise contract and if followed, no legal contract in the nature of a franchise can be made with any utility on the subject because rates are always involved. Under such holding, a utility may contract to do many things as its part of the contract and it can, therefore, refuse to perform any of them, and yet obtain relief by increased rates. Such a rule does not apply in any other walk of life because it is well settled by all authorities that one seeking relief under a contract must plead performance on his part and absent such performance, he can secure no relief in a court of equity. "One who seeks equity must do equity."

These propositions were ignored entirely by the Supreme Court and it was such rulings as this that allowed the utilities in the twenties to value their property at an exorbitant price in order to secure higher rates, as well as to organize holding companies which sold millions of dollars of stock to the public which stock, in many instances, was of no value. There is no reason why a utility cannot contract as to value with a city.

In 1926, I attended the American Bar Association meeting at Denver, Colorado. While there, I had quite a few discussions with some Tennessee lawyers, discovering that that state imposed a tax upon the sale of cigarettes, which produced considerable money. Upon returning to Kansas City, I investigated the matter and found that several states taxed the sale of cigarettes but that no city had ever attempted to do so. I investigated the question so far as the constitution of Missouri and the Charter of Kansas City were concerned and finally

prepared and drew an ordinance, levying an occupational tax of 20% of the retail sales price of each package of cigarettes sold, offered or displayed for sale within the city. I had considerable difficulty in convincing the City Manager and the Council that the same should be passed, but finally succeeded.

This, however, involved the city in litigation which lasted several years. The American Tobacco Trust had fought all such taxes and in many instances, defeated the effort of states to tax cigarettes. Such a bill had been introduced in the Missouri legislature for many years but was always defeated. The American Tobacco Company employed three well-known lawyers of Kansas City to suspend the act under the referendum provision of the Charter, in order that it might be submitted to the voters of Kansas City for their approval or rejection. The lawyers employed were R. R. Brewster; Frank W. McAllister, former Attorney General of Missouri and a prominent attorney; and James P. Aylward of the firm of Walsh & Aylward. Mr. Aylward was a very prominent lawyer, at one time Chairman of the Jackson County Democratic Committee; Chairman of the Democratic State Committee and Democratic National Committeeman from Missouri.

They secured a sufficient number of signers and lodged the petition with the City Clerk, demanding a referendum. Upon my advice, the City Clerk refused to accept the referendum petition on the ground that the subject was immune from referendum because it was a tax measure. Thereupon, the lawyers applied to the Supreme Court of Missouri for a writ of mandamus to compel the City Clerk to accept the referendum peti-

tions, and to submit the matter to a vote of the people at a special election. The case was fully briefed and argued before the Supreme Court, and an opinion sustaining the city handed down, holding that any city would be in severe financial straits if every occupation tax could be held up by the referendum, and that, therefore, said ordinance, being a tax measure, was immune from the referendum.

By agreement, a cigarette dealer was arrested for selling cigarettes in violation of the city ordinance, and immediately an application for a writ of habeas corpus was filed in the Supreme Court of Missouri to release the dealer on the theory that said tax was unconstitutional, and that the city had no authority to pass same. Walsh & Aylward and Albert A. Ridge of Kansas City, now on the Federal bench, were employed by the Tobacco Trust to test the constitutionality of this act. Frank P. Walsh was then living in New York City and had a reputation of being one of the great lawyers of America. He had been appointed by President Wilson, along with the Honorable William H. Taft, on the Labor Board during the World War, and had practiced law in Kansas City for many years before going to New York.

The Supreme Court of Missouri, in a very able opinion, sustained the act and held that it was within the power of the city to tax the sale of cigarettes. The tax is still in effect and has produced more than $500,000.00 a year for the city. I felt that this was my contribution to the city. Many American cities profited by this legislation and now have laws taxing cigarettes.

XXIII

THE SCANLON CASE—POLICE DEPARTMENT AFFAIR—KANSAS CITY BOND ISSUE

One of the most interesting cases that came into my office during my term as City Counsellor was a suit against Kansas City brought by Edward Scanlon. He charged a loss of services and expenses because of wrongful injury to his son, and infant, who was injured on a board sidewalk in Kansas City in 1900.

A suit had been filed upon behalf of the infant by his father in 1900, tried in 1903, and the jury had returned a verdict in favor of Kansas City, holding the injury to the infant was the result of negligence of the infant and his father and that therefore, the city was not liable. The father, at the same time, filed a suit for himself for loss of services and expenses in caring for the infant. Such suit was voluntarily dismissed by the father in 1904 and a new petition filed which remained on the docket until 1915, when it was dismissed for failure to prosecute. A new petition was filed in 1916. That case remained on the docket until 1923 when an amended petition was filed and the case tried that year.

The suit having been first filed in 1900 and not tried until 1923, the city contended that the five-year statute

of limitations had run and the suit was, therefore, dead. The boy was severely injured and could get around only in a wheel chair. The jury returned a verdict of $35,000.00 for the father, although a previous jury had found that the city was not liable for the injury to the boy. The case had been tried in a previous administration and was in the Supreme Court when we took office. We briefed and argued it, and the judgment was reversed and remanded. After I left office, however, it was tried again and a verdict for $25,000.00 rendered. It is very seldom that litigation is as prolonged as it was in this instance.

During this period the issue of Home or Foreign direction of City Police Departments became one of public concern. St. Louis, Kansas City, and St. Joseph, the three largest cities in the state, did not have home rule. The Commissioners were appointed by the Governor of the State, and operated the department. Kansas City wanted home rule and a test case was filed in the Supreme Court on the theory that such state act was unconstitutional, and that Kansas City should be allowed to operate its own police department.

Under the law as it existed, the Police Commissioners could demand any sum of money they thought necessary from the city, and the city was compelled to pay. I briefed and argued the case and an opinion was handed down denying Kansas City the right of home rule. The act was upheld.

A very able dissenting opinion was filed by Judge Walker, sustaining the city. The following year, a similar suit was filed in the Supreme Court of Missouri. In that suit, the court held the police act unconstitu-

tional and gave Kansas City home rule. For several years thereafter, Kansas City operated its police department. It was during that time that many scandals arose, and the department was accused of protecting criminals. The town was wide open.

Later, the Legislature wrote a new police act for Kansas City and the department is now operated from Jefferson City, the state capital, as it was for many years. Home rule proved more or less a failure, and it is doubtful if the city will ever attempt to obtain it again.

During the winter of 1931, there was a great deal of suffering in Kansas City and throughout the United States. The streets were filled with idle people. Soup houses were maintained in several parts of the city and there was no work of any kind for laboring men. The Chamber of Commerce and other civic bodies, along with the newspapers, were urging the city to find work for the unemployed.

Although I had left the City Counselor's office, the City Manager called me and told me his problem. He wanted to employ several hundred men to extend the water mains in Kansas City and wished to borrow one million dollars upon behalf of the city, without a special bond election. I knew that Kansas City owned and operated its water plant in a proprietary capacity and could borrow money upon it without pledging the credit of the city. I informed him of this and he asked me to meet the next day with the leading bond and bank attorneys in Kansas City, to see if the banks would lend the city the money. We had a conference all day and at the end, all of the banks refused to take the city's securities.

I suggested to the City Manager that the city issue income notes, payable solely from the income of the water plant. They would not be an obligation of the city and Eastern bond houses would probably buy the bonds. He instructed me to prepare the ordinances and notes. We prepared two notes of $500,000.00 each, payable in one and two years, with 5% interest. I took the record to Chicago to secure the approval of a nationally known firm of bond attorneys, as banking houses will not buy bond issues except upon such approval. We knew a firm in the Windy City which agreed to buy the notes if we would furnish an opinion as to their validity. I spent all of one day with the bond attorneys and finally, they turned the plan down.

I then telephoned the City Manager that I was going to New York to try to obtain the approval of a well-known firm of bond attorneys there. He told me not to return to Kansas City until I had the plan approved. After making the appointment in New York, I canceled it, going instead to St. Louis, to confer with a well-known firm of attorneys there. Charles & Rutherford had approved one sixty-million-dollar bond issue, and another one for ninety million dollars for the issuance of Missouri Road bonds. I met with them and they approved the issue. The bonds were then sold, several hundred men were employed on the streets of Kansas City during that winter, and the situation greatly relieved. The income of the water plant was so great that the bonds were paid when due. To me this was a convincing illustration of the fact that most local problems can be handled locally, and will be, if local communities know that the responsibility for doing so rests

with them. Undoubtedly there are cases where outside help is needed, but I am convinced that they are rare.

In 1926, during the time I was President of the Missouri Bar Association, the annual meeting of that body was held in Kansas City. I wanted, as our principal speaker, the Attorney General of the United States, Honorable John G. Sargeant of Ludlow, Vermont. At that time, he was the most colorful man in the United States. President Coolidge had appointed him . . . a country lawyer from a small Vermont town . . . as Attorney General, and many articles were written about his New England philosophy and homely phrases. He was a typical New Englander.

The Attorney General declined my invitation early in the summer of 1926. Finally I prevailed upon the Missouri delegation in Congress to call upon him and insist that he speak at our September meeting. Reluctantly he consented to do so and appeared in Kansas City on the morning of the day his address had been scheduled. Accommodations had been provided for him and he was to speak from eleven o'clock until noon. Upon meeting him, I was impressed by his New England quaintness and his taciturnity. He immediately informed me that he would be forced to leave immediately following his address, and that he had his tickets and reservations.

His speech was a great success. He spoke on the subject of law enforcement and the work being done to enforce prohibition. He was given a splendid reception by a large audience. His sincerity and his obvious belief in his own convictions impressed every one.

During the morning, he had met many members of

the Bar. After his address, he asked if it would be all right for him to remain in Kansas City until that evening in order to hear the afternoon program. I assured him that we would be delighted to have him. He attended the meetings, and at the close of the day's program, again asked me if it would be agreeable for him to stay for the night meeting, and leave the next day. I assured him that it would, and he stayed until the afternoon of the second day. I think, for the first time in his life, his New England reserve thawed, somewhat, and that he really enjoyed himself.

He and the Coolidge family had been close friends in Vermont. He was the most typical "Yankee" who had ever appeared at one of our meetings and when he left, every man was his friend.

Mr. Sargeant was the first Attorney General of the United States to appear on a program in the "Show Me" state. At that, he found himself in rather fast company. On the program with him were Honorable Edwin L. Katzenbach, Attorney General of New Jersey; Governor Hadley, at that time Chancellor of Washington University; Governor Arthur M. Hyde, three years later a member of Hoover's Cabinet; Attorney General Paul P. Prosser of Colorado; Honorable Jacob M. Lashly of St. Louis, later President of the American Bar Association, and Honorable Perle D. Decker, of Joplin, who had been in Congress for many years.

Mr. Sargeant visited the beautiful War Memorial for the soldiers and sailors of World War I, as the invitation had been extended by Mr. John T. Harding, a distinguished lawyer of Kansas City. We all thought that would be the last Memorial built and the last war, and

so thought Mr. Harding when he used this language in his invitation:

> "Mr. President: Before the afternoon session commences, I would like to invite all the gentlemen present to the dedication of the Liberty Memorial here on Armistice Day. I can easily understand why those gentlemen living out in the state, out of touch with this great thing, do not get the feeling of zest that we have here, who built it. Kansas City paid more for that Memorial than Jefferson paid Napoleon for the Louisiana Purchase. It is the most important and most costly War Memorial on the Western Hemisphere. The ground was consecrated by Marshal Foch, Admiral Beatty, Mr. Coolidge, General Pershing, General Jacque and General Diaz, and others. The greatest men that ever trod the earth, the five men who held civilization in the palm of their hands, stood on the platform and consecrated that ground, and today, it stands as Kansas City's prayer in stone that it will never happen again. It is the voice crying in the wilderness 'peace and good will'; it is the graven image of our devotion to the dead. Kansas City built it and has given it to the nation."

During that year, I called four regional meetings in Missouri, at Kirksville, Poplar Bluff, Springfield and Columbia. This, I think, was the start of the regional meetings throughout America. The American Bar Association has since adopted this idea, and holds regional meetings throughout the country each year. The idea

has proved successful, for many lawyers are unable to attend annual meetings, but are delighted with the opportunity of hearing legal questions discussed. To have close and prolonged associations with American lawyers is to experience an accession of respect for them, and an increased confidence in the courts which they service.

This meeting was a truly great and inspiring one, and I am sure that such was the opinion of every lawyer who attended it.

XXIV

KENTUCKY LITIGATION AND "MAN O' WAR"

In 1926 I was employed by the State of Kentucky to represent it in fire insurance rate litigation. Later, I was re-employed by Governor Flem D. Sampson and the Attorney General, and represented the state until the litigation was settled in 1928. The insurance companies had applied for a 12½ per cent increase in rates, amounting to more than one million dollars a year, and the state resisted it. I went to Kentucky for several days each month and took testimony at Frankfort.

On one of these trips, the state officials invited me to accompany them on a trip through the Blue Grass region. It wouldn't have been complete without seeing Man O' War, one of the world's greatest race horses. However, our relations couldn't by any stretch of the imagination be called friendly, for he bit me. When I was taken to Lexington for examination, the physician immediately asked me about the marks left by the horse's teeth. I explained that Man O' War had evidently taken a dislike to me, and had gone to some lengths to show it. Whereupon he said: "You shouldn't have your arm dressed. Instead, you should go on the

vaudeville stage for you're the only man that Man O' War has ever bitten!".

The Associated Press carried the following story:

MAN O' WAR BITES MR. BARKER

City Counselor Gets Too Near Noted Horse in Kentucky

"Frankfort, Kentucky, Nov. 16—John T. Barker, city counselor of Kansas City, who is here assisting Attorney General Frank E. Daugherty in conducting the insurance rate case, is nursing a sore arm as a result of a bite inflicted by Man O' War, the noted stallion, for which $400,000 was refused.

"Mr. Barker, in company with Charles E. Marvin, state banking commissioner, made a trip through the Blue Grass, stopping at Faraway Farm in Fayette County to see Man O' War. Mr. Barker, not being as familiar with thoroughbreds as with insurance rates, got too near the King of Stallions, who resented the familiarity and inflicted a slight bite on the arm. Medical attention fixed Mr. Barker up but the bite left his arm a little sore. He will not suffer any permanent ill effects from the 'nip' of the world's most valuable horse."

After taking testimony for about two years, the case was settled, and there has been no further trouble in Kentucky between the insurance companies and the state. The companies had suffered tremendous losses

because "night riders" had burned many of the largest tobacco warehouses in the state because they were dissatisfied with the actions of the tobacco trust. Governor Sampson and Attorney General Camack, while of different political faiths, were both able men, and my association with them was very pleasant.

* * *

After putting the reduction of 10% into effect in August 1929, the insurance companies, in December 1929, applied for a 16 2/3% increase of fire insurance rates, alleging that the present rate was confiscatory. Upon the Superintendent of Insurance denying their request, they instituted 136 separate suits in the Federal District Court at Kansas City, seeking to enjoin the state officials from interfering with their collection of such increased rate pending litigation. The Federal Court granted injunctions and ordered excess premiums impounded with the Commerce Trust Company of Kansas City.

In the state court, seventy-five companies filed a joint suit, and secured an order from the Circuit Court allowing them to collect the excess and to impound it with the Superintendent of Insurance. Later, the Court made an order transferring this money from the Superintendent of Insurance to the Registry of the Circuit Court and appointed a custodian to impound it.

The Governor and Superintendent of Insurance, under a statute authorizing the Superintendent to employ counsel to enforce the insurance laws of the state,

employed the law firm of Bowersock, Fizzell & Rhodes, of Kansas City, and Ira H. Lohman, of Jefferson City, to represent the Insurance Department in opposition to this increase. Later in November 1930, these lawyers employed me to assist them. Testimony again was taken throughout the United States, and the record was one of the largest ever made, amounting to more than one million pages. Testimony was taken in New York, Hartford, Chicago, St. Louis, Jefferson City, and Kansas City, and at other points throughout the East and on the West Coast.

The Commissioner appointed by the Federal Court was Honorable Paul Barnett, one of Missouri's leading lawyers, and at one time a Commissioner of the Kansas City Court of Appeals. The Commissioner appointed by the State Court was Honorable Dudley F. Calfee, a former member of the Public Service Commission in Missouri.

The testimony was completed in both matters in the spring of 1933, and in July 1933, after a new administration had come into existence, Mr. Jacobs, who had been associated with me in all of the other litigation, was employed, along with Mr. Weatherby and myself. Extended hearings were held before the Commissioners and finally the matter was fully briefed and argued, and in every instance was decided in favor of the insurance companies, who were granted an increase of 16 2/3% in fire insurance rates, which would have amounted to about $3,500,000.00 a year to policy holders.

We filed exceptions to such reports with the Federal Court, and with the State Court, and selected five typical cases out of the 136 and presented these cases to a three-judge Federal Court which had been assembled. This court consisted of Circuit Judge Kimbrough Stone, and District Judges Reeves and Otis. The matter was fully briefed and argued before that court on the exceptions to Judge Barnett's report, and also before Honorable Nike G. Sevier, Circuit Judge at Jefferson City, as to Judge Calfee's report.

Before an opinion was handed down in either of these cases by the three-judge Federal Court or by the State Circuit Court, all of the cases were settled by the then acting Superintendent of Insurance and the insurance companies on a basis of 20% to policy holders and 80% to the companies from which they would pay their agents, all expenses of the state, and all expenses of litigation, and reimburse the state for all of its expenditures. The settlement was in effect approved by the Federal Court in February 1936, and the money distributed. The state Judge refused to sustain the settlement and the companies appealed to the Supreme Court of Missouri. The case was set down for argument on its merits, and in a 4 to 3 opinion, written by Judge William F. Frank, the settlement was set aside and the impounded money was ordered refunded to policy holders.

While the 10% rate reduction suit was being tried, the Superintendent of Insurance notified the companies of a hearing to determine whether he should not order

a further decrease of 15%. The companies secured an injunction from the Circuit Judge at Jefferson City, without notice to the state, enjoining the Superintendent from holding such hearing. The Superintendent then made an order reducing rates 15% and was cited for contempt. A hearing was held before the court and the finding was that the Superintendent be adjudged guilty of contempt for violation of the Court's injunction and as an individual, he be fined $100.00 per day until he set aside such reduction order. The court did not order him placed in custody of the sheriff in order that habeas corpus might be applied for; but stated he would issue an execution every day against the personal property of the Superintendent to recover the penalty. The penalty did not run against the Superintendent as an official, but as an individual. The Superintendent's brother was the Governor at the time, with power to grant pardons, but he had no power to set aside a civil penalty.

An appeal was taken to the Supreme Court of Missouri, and on the day I argued the case, the penalties amounted to more than $100,000.00. The Court held the Circuit Court without jurisdiction to punish the Superintendent for the holding of a hearing and relieved him from payment of such penalty, and dismissed the proceedings.

The insurance litigation in Missouri started in 1922 and ended nearly twenty-five years later. The companies selected Missouri for the purpose of making a test case as to the proper method of figuring profit and loss. Had they been successful in establishing their

method, they could have increased fire insurance rates throughout the United States one hundred million dollars a year. They tried desperately to get the Supreme Court of the United States to pass upon the matter, but could never get it to do so. Their excess collections in Missouri during this time amounted to more than twenty-six million dollars. They refunded all of it, and paid all the expenses of the state, and of course their own expenses.

XXV

THE AMERICAN BAR ASSOCIATION

In 1916, I joined the American Bar Association. There are about 180,000 lawyers in the United States and some 45,000 of them are members of this organization. Some of the leading lawyers and jurists of America have been its Presidents. Missouri furnished the first, the Honorable James O. Broadhead of St. Louis.

In 1935 members in Kansas City concluded to invite the Association to hold its annual meeting there. At that time, Clif Langsdale was President of the Kansas City Bar. The new Municipal Auditorium was nearing completion and we felt that Kansas City was fully prepared to entertain the members properly.

In July of that year, thirty-five or forty of the prominent lawyers of the city, including Federal Judges Reeves and Otis, made a trip to Los Angeles in a special Pullman car. Upon arrival in Los Angeles, we learned that there was a bitter fight over the Association Presidency between Judge William L. Ransom of New York and Honorable James M. Beck of Philadelphia. Ransom had been active in the Association for years, having been Chairman of its Utility Section, and on the Board of Governors. While Mr. Beck was recognized as a great lawyer, he had not been active in the Associa-

tion, and did not have the wide acquaintance with members which Ransom had. Beck, however, had been Solicitor General under President Coolidge, had written many legal works, and had argued a great many leading cases before the Supreme Court of the United States. He stood in the front rank of American lawyers. Mr. Ransom in turn, was a partner of former Governor Charles S. Whitman, a former President of the American Bar Association. His firm had a very large practice in New York City.

The Kansas City Delegation chose to place me on the Council of the Association, which nominates officers, in order that I might present the claim of Kansas City for the next meeting. Most of the Kansas City lawyers were inclined to favor Judge Ransom for the Association Presidency, but all of us knew that Judge Otis had been an Assistant Solicitor General under Mr. Beck. We also knew that Mr. Beck had taken Judge Otis to President Coolidge, and urged his appointment as a Federal Judge at Kansas City. Beck, perhaps more than anyone else, was responsible for Judge Otis' appointment. Reeves and Otis were two of the most popular Federal Judges Missouri has ever had, and I instantly concluded it was my duty to support Mr. Beck because of his past favors to Judge Otis. I did this, with the full approval of all of the Kansas City lawyers. I voted for Mr. Beck in the Council meeting, but Judge Ransom prevailed, and his name was presented to the Convention for ratification. A motion was made to substitute the name of Mr. Beck for that of Ransom. For the first time in my memory, I saw the matter referred to the floor. A vote of all of the members was taken by ballot

and each member was required to march by the judges and deposit his ballot. Judge Ransom was elected.

On the last day of the meeting, the Board of Governors met for the purpose of designating a city for the next year's meeting. I presented the claim of Kansas City, and Dean Roscoe E. Pound of Harvard University, presented the claim of Boston. Harvard was then celebrating its Three Hundredth Anniversary. The board took the matter under consideration and by a majority of one, decided in favor of Boston. The convention was held there in 1936.

I was elected to a three-year term on the Council, and at Boston, the Constitution of the Association was changed. A House of Delegates was provided and all members of the old Council were made members of the new House, along with other officers of the Association. In 1936, on the last day of the Boston meeting, once again I presented the claim of Kansas City. Dean Henry W. Arent, of Ohio State University, later a Federal Court Judge, presented the invitation of Columbus, Ohio. At the conclusion of the meeting, Kansas City was selected as the locale of the 1937 meeting.

The American Bar Association has annually a week-long meeting. During this time, there are meetings of the entire assembly, and also meetings of the House of Delegates. At the 1937 meeting, George M. Morris, of Washington, presided over the House meetings. He was one of the ablest presiding officers the Association has ever known. Frederick H. Stinchfield, of Minneapolis, had been elected President of the Association in Boston and he presided over the 1937 assembly meetings. I was in charge of arrangements for this long-

awaited meeting and organized several committees, raising about $20,000 for entertainment purposes. Olive G. Ricker, the Executive Secretary, devotes all of her time to its activities. She came to Kansas City many times during that summer, securing hotel reservations for members, and making arrangements for meetings, and banquets. She is a very able executive.

September 27, 1937, was the long-awaited day. The Association convened on that date in the new six-million-dollar Municipal Auditorium, which had just been completed. This building is one of the finest structures in America, and one of the few buildings able to accommodate all of the activities of the Association. In the building is a main auditorium, seating about 20,000 people; a Music Hall, seating about 3,000; the Little Theatre, seating about 1,500; and numerous committee rooms. An electric speaking system reaches every room, and the entire building is air-conditioned.

The Kansas City of the thirties was a colorful town. Amusement was its aim and originality in offering it was the keynote; gambling was as legitimate as the grocery business, and every kind of gambling was open to the public. Slot machines operated all over town. Bookmaking establishments would bet any sum of money on races throughout the world. The gambling rake-off was said to be a million dollars a month. Night clubs flourished. Kidnapping was an art. Mary McElroy, daughter of the City Manager, was kidnapped and released after the payment of sixty thousand dollars. Her abductors are still in the penitentiary. One of the Katz brothers, world-famous druggists, was kidnapped and paid a reported one hundred thousand

dollars for ransom. Mrs. Nell Donnelly, designer and creator of the famous "Nelly Don" dresses, was kidnapped and held for a million-dollar ransom. Her attorney, Senator James A. Reed, later her husband, announced that if she were injured in any way, he would devote the rest of his life to the punishment of any one participating. She was later released, unharmed, and her kidnappers were sent to the penitentiary. Many gamblers and racket men were also kidnapped, and paid large sums for their release.

Desperate criminals sought Kansas City as a haven, for here they were safe. Every imaginable kind of vice flourished and was protected. Murders were numerous.

Kansas City had a population of four hundred thousand, and a voting registration of nearly three hundred thousand. The figures showed a pad of 75,000. Uncle Sam came to town in 1936, and when he left, had convicted nearly three hundred election officials. District Attorney M. M. Milligen and his staff did not lose a case.

It was here that the American Bar Association held its meeting. The attendance that year was 4,172, the largest in history. At the first meeting, held in Saratoga Springs, New York, in 1878, there were 75 in attendance. In 1918, at Cleveland, Ohio, there were 604. At Philadelphia, Pennsylvania, in 1924, there were 956, and at Grand Rapids, Michigan, in 1933, there were 1,409. In 1936, the meeting held at Boston had an attendance of 3,268.

The Kansas City meeting was not only the best attended meeting in the history of the Association, but was one of the finest in quality. This was partly due

to the fact that every activity was under one roof. Usually there are eight or ten meetings in progress at the same time. In other cities, such meetings were scattered, making it impossible for one to attend them all.

In 1937, the Association concluded to fight President Roosevelt's Court bill, and named a large committee, which met for several months in Washington to oppose the bill. The expense of doing this was about $75,000. The Association takes credit for defeating the President's plan, but those of us who were in support of it believe President Roosevelt to have been the victor. At any rate, he appointed seven members of the court, and his legislation, as a whole, was sustained. Many of his appointments met with severe criticism, but when an election is over the American people seem to quit worrying. This incident was no exception and I think the people generally are well pleased with the personnel of the court.

The Association has organized a charitable holding corporation with authority to receive gifts and bequests. I opposed the formation of this corporation because I do not believe the general public should be allowed to contribute to Bar Association activities. I feel that the lawyers of America should maintain the American Bar. However, if such gifts are carefully scrutinized before acceptance and are accepted only from those having proper motive for aiding the American Bar Association, no harm will result. On the other hand, if gifts are accepted from commercial enterprises, dealing with courts, the results may be quite different.

Most of the Federal Judges belong to the American Bar Association, and are very active in its work. The House of Delegates is the controlling body of the organization, consisting of about 250 members from the states and certain large cities. The Attorney General of the United States and the Solicitor General are members. All matters to be presented to the House of Delegates are carefully considered by committees, and there is little opposition to any proposals. Any member may speak on any subject, but few avail themselves of the privilege. As in all legislative bodies, only a few of the members ever address the House. Many important matters are voted on without discussion and I have always thought it would be a good plan for some member to be designated to oppose all proposals, in order that a full discussion be had, and the members be able to vote more intelligently. There are two sides to every proposal, no matter how unimportant it may seem.

In President Roosevelt's Court plan, he contemplated a "proctor" who should have jurisdiction over the administration of all Federal Judges in the United States, with authority to supervise their acts and see that their work was efficiently done. After such plan was withdrawn from Congress, the Association, with Attorney General Cummings, worked out a plan similar to that of the President's. This plan provided for the appointment by the Supreme Court of the United States of a person to do about the same thing as was set forth in the President's bill. Prior to that time the Attorney General of the United States had such authority over Federal Judges. Therefore, I opposed the bill on the ground that such authority should be left with the Attorney

General, and that the Judges should not have the power to appoint an administrator, as that would result in the Judges regulating themselves. I felt that the appointment should either be made by the executive, or by the organized bar, in order that an independent department would have a complete check on Judges.

The safety of our Republic lies in a proper recognition of the three divisions of government, and each should provide a check upon the other. If the executive branch can check itself, the legislative branch can check itself, the judicial branch can check itself, then violence is done to our form of government.

A heated discussion arose over a proposal that Congress pass a corrupt practice act, giving the Federal Courts control over all elections at which Federal officers are elected. This, of course, if followed to its logical conclusion, would allow prosecution every two years of any election offense occurring in any county in the United States, in the Federal Courts. Such courts now have authority over certain Federal violations of elections, and were able to destroy the political machines of Kansas City and Louisiana. I was unable to see any reason for extending such power. I, therefore, opposed the bill, as did many others, and it was defeated.

Prior to the amendment of the Constitution in 1936, creating the House of Delegates, the American Bar Association was considered by most lawyers a closed corporation, with only a few members controlling it. It was thought the amendment would make the Association more democratic, and allow lawyers throughout the United States to participate in the proceedings. I think it is generally believed that the amendment was an im-

provement. However, it appears that, as in all associations, a few members are in control, and chairmanships of committees are usually confined to a small group. These chairmen usually are kept in office indefinitely. It is very difficult to secure a chairmanship of a committee and in many instances very difficult to secure a place on a committee, unless the chairman of such committee suggests it.

The President of the Association is usually an attorney who has been active in its affairs for many years and has rotated through different offices. Occasionally this plan is not followed and some lawyer or former judge who has evidenced little interest in the Association and who has attended but few of its meetings is elected. Such Presidents were Charles Evans Hughes, John W. Davis, and President Taft.

Great efforts are made to increase the membership in the Association, as only one lawyer in four or five in the United States belongs. The Association feels that it is weakened in attempting to speak for the entire Bar of America with such a small membership. All lawyers, upon admission to the Bar, should automatically become members of their local associations, their state association, and the national association. Then the organized bar should take over and assume the responsibilities which belong to it. It should have exclusive control of all legal matters pertaining to the practice of law; the preparation of court rules for procedure; admission to the Bar; the supervision of law schools; the preparation of codes in the different states and in the Congress of the United States; the tenure of office and the selection of judges; and the administration of jus-

tice generally. Only the organized Bar can know of the many problems and the proper solution of them. The organized Bar is better prepared to suggest changes in codes and in court rules, because it represents all litigants, and the Bar, rather than courts and legislative bodies, should attempt to improve the administration of justice.

Judges who have been upon the bench for many years are not familiar with the practice of law, and the difficult problems involved. They are not in a position to make changes for the best protection of litigants and the public. These problems are everyday matters to members of the Bar, and the Bar alone should suggest changes for the administration of justice. Only the Bar knows the type of men who should preside over the courts in America; their selection should come from the Bar. Judges cannot act for themselves, and the Bar must be a clearing house to advise the public as to the efficiency of the courts. Judges of courts are lawyers and only the Bar can know their fitness. If judges are not efficient, they can only be admonished by the Bar, because under our scheme of government, the people have no control over their judges, except by impeachment. That plan is so cumbersome as to make it wholly ineffective. Through criticism from the outside and through dispassionate self-analysis, the American Bar can move, step by step, from year to year toward the erection of a legal structure which will finally, I am convinced, render to the American public the finest justice which the limited capabilities of men make possible.

Every lawyer in the American Bar Association hopes to have the chance to speak at the Association's annual

banquet. This is a great honor. The banquet is always a colorful thing. Most of the men and women are in evening dress. There are from twelve to fifteen hundred seated, and the cost is usually $7.50.

In 1945 this banquet was held in the magnificent Hall of Mirrors of the Netherland Plaza Hotel in Cincinnati, on the evening of December 19th. The late date was on account of World War II ending so late that no fall meeting could be held. David A. Simmons, of Houston, Texas, was President of the association that year, and made a fine one. He invited me to speak at the banquet. On the program also was Mr. F. Phillippe Breis, C.B.E., K.C., President of the Canadian Bar Association, and Captain Harold E. Stassen, just back from the Pacific with the Navy, and a former Governor of Minnesota.

I was the last speaker, and stated that I wanted to speak a word for the lawyers of America. In part I said: "When I accepted the invitation to speak at this banquet, I did it for my State, and I am glad tonight to represent the great State of Missouri at this meeting. The eyes of the world are upon Missouri. Everyone is wondering what the man in the White House is going to do with the atomic bomb, with the strikes, with unemployment, and with the question of how to feed the world. Recently, two men were in a Washington barber shop. When one predicted that the atomic bomb would end the world, the other said, 'I'm from Missouri—you'll have to show me.' His friend answered, 'Hell, who isn't from Missouri these days?' I do not know how the President will handle these mammoth questions, but I have faith in the Missouri farm boy, and I believe he will plow a straight furrow. Flo Ziegfeld glorified the

American girl; Warren glorified the American Judge; and I would like tonight, if possible, to glorify the American lawyer. His name does not appear on the pages of history, and you hear of him only when attending memorial services. Neither Jefferson, Patrick Henry, Jackson, Webster, Clay, Lincoln, nor Woodrow Wilson are referred to by historians as lawyers. They are statesmen. No monument has ever been erected to a lawyer."

In 1924, the members of the American Bar Association were entertained by the English Bar in London and the French Bar in Paris. Since that time, the English Bar and the French Bar have sent some of their greatest lawyers and judges to this country to attend our meetings.

In 1930, the American Bar Association entertained the French, English, Irish Free State and Canadian Bars in Chicago. Such honored guests as The Right Honorable Viscount Dunedin, G.C.V.O., and Viscountess Dunedin, of London, and The Right Honorable Lord Macmillan and Lady Macmillan, of London, were present. From France were Monsieur Henri Decugie, of Paris. The Irish Free State was represented by the Honorable Mr. Justice Hanna and Mr. M. J. Ryan, S.C., of Dublin. From Canada came such notables as Honorable Chief Justice Harvey and Mrs. Harvey, of Edmonton, Alberta, and W. C. MacDonald, of Halifax, Nova Scotia.

The meeting was held at the Stevens Hotel. Becoming acquainted with lawyers of the different countries represented proved to be quite interesting, and in some cases amusing. Falling into the latter category was my meeting with the French Avocat a la Cour de Paris,

Monsieur Marcal Ragon, and his very charming wife. Upon entering the lobby of the hotel one morning, I noted a foreign looking gentleman at the Western Union desk. Seeking the American Bar Association identification button in his lapel, I walked over and introduced myself to him. As it turned out, he was in France what our Attorney General is in the United States. As his English was not too good, his wife, who accompanied him, did most of the talking. After a few comments about the meeting, I suggested that they should enjoy a typical American breakfast, and recommended the Blackstone Hotel. I said, "You should begin with half a Persian melon, follow it up with eggs and little pig sausages." At this point, I was interrupted by the charming lady who questioned . . . "Sissages? Sissages? No, no, rolls and coffee!" "No matter what you call them," I answered, "You should try sausages and eggs. Then perhaps you should top the meal off with waffles and maple syrup and coffee." The lady seemed horrified. "Waffles for breakfast? No, only rolls and coffee!" "Well, that's an American breakfast for you. You'll miss something if you don't try it," I replied. After a few more minutes of conversation, I left them.

The next evening a ball was scheduled for members of the association and their distinguished guests. Upon arriving, I glimpsed the lovely blonde Frenchwoman, attired in a shimmering gold sheath of a gown which left no doubts as to why Paris is the style center of the world. During the evening, she and her partner of the moment approached, and she stopped to talk. "Your American breakfast almost killed my husband and me,"

she confided. "Too much food." So while American lawyers and their foreign counterparts agreed on points of the law, tastes in food differed greatly.

A Missourian, Honorable Guy A. Thompson, of St. Louis, a President of the American Bar Association, presided at the meeting in October 1932 at Washington in Constitution Hall. President Hoover addressed the meeting, as had President Wilson in the same hall in 1914. President Hoover then laid the cornerstone for the new Supreme Court building, which today is one of the finest structures in Washington. A reception was tendered the members of the Association at the White House that evening and Lord and Lady Reading headed the English delegation, and M. Paul Renaud, the French delegation. The President, his wife, and the cabinet members and their wives assisted in receiving the guests.

Honorable John W. Davis, a former President of the association, stated that the first meeting of the Supreme Court of the United States was held in the building of the Royal Exchange on Broad Street in the City of New York. That it later moved to the new City Hall in Philadelphia, then joined the other departments in Washington, where it first occupied a tiny room now used as an office by the Marshal of the Court. It then moved to the rooms now occupied by the Clerk of the Court. It then descended to the basement room described as a mere "potato hole of a place." It was moved from the basement by the English when they invaded Washington in 1814, and the furniture and books were burned.

The Court then found shelter in the home of the Clerk, Elias Boudinot Caldwell, on Pennsylvania Ave-

nue, S. E. Two years later, it moved to a small room in the ruined portion of the capitol. It remained there for forty years, and it was here that Marshall and Taney did their work. In 1860, the Court moved to the deserted Senate chambers, after the Senate had moved to its new room; there it remained until it entered the present building.

Justice Owen J. Roberts, of the Supreme Court, addressed the meeting, and stated that in 1832, Webster, Wirt, Sargent and other lawyers appeared before the Court in velvet coat, brass buttons, ruffled shirt front, lace cuffs, a brilliant waistcoat, high collar and black stock. After the Civil War, and up to the nineties, the Bar appeared before the Court in low cut vest and claw hammer coat; then came the Prince Albert coat and, in turn, the morning coat, which is still the accepted costume. He said the rule was not enforced now as it had been, but that several years ago the clerk kept suitable costumes for uninformed counsel and they were requested to redress before they were escorted into the court room.

M. Paul Reynaud, former French Minister of Justice, addressed the meeting and in speaking of the French Bar, said:

> "I bring to the American Bar Association the greetings of an old and respectable lady, the Paris Bar. Historians are still looking into the darkness of time for her birth. In 1274, a King more or less forgotten, Philip-the-Bold, passed the first decree regulating her conduct, but it is likely that she was no longer in her first years.

"In the 'Hall of the Lost Steps' of the Place of Justice in Paris, lawyers still walk, wearing gowns hardly different from the ones which were worn under Philip-the-Bold, and every year the members of the Bar attend faithfully the religious service in honor of their patron, Saint Nicholas, which takes place in that jewel of the French Gothic art, the 'sainte Chapelle' which, as most of you know, is situated in the courtyard of the Place of Justice.

"Thus, through so many revolutions and political regimes, the Paris Bar has kept its character and maintained its traditions."

XXVI

THE UNION STATION MASSACRE

At 7:25 o'clock on the morning of June 17, 1933, the Union Station massacre in Kansas City occurred. It was one of the most brutal crimes ever committed in the United States. At that time, four Federal F. B. I. agents and three police officers, including two Kansas City policemen, were transferring a convict named Frank Nash from a train which had just arrived at the Union Station in Kansas City, to an automobile standing in the parking space just south of the station. Nash was an escaped convict from the Federal Penitentiary at Leavenworth, and had been a member of two or three of the leading criminal gangs in the United States. He had been captured the day before at Hot Springs, Arkansas, by Federal officers and driven to Fort Smith, and placed upon a train which arrived in Kansas City at 7:25 the next morning.

Nash had been as associate of one Verne Miller, an outlaw from South Dakota and Chicago, and the leader of a gang of criminals. When we entered World War I, Miller happened to be in Huron, South Dakota, with a carnival company. He enlisted there and served in France. He came back a hero, and was elected Marshal and then Sheriff of that county. He later was sent to the

Penitentiary for embezzlement. He joined one of the several gangs in Chicago during the days of Al Capone, and was one of the noted gangsters of that city. Nash belonged to his gang, as did Harvey Bailey, now in Alcatraz, and other noted criminals.

Mrs. Nash telephoned Miller in Kansas City, stating that the Federal officers had picked up her husband and would arrive with him in Kansas City the next morning at 7:25. Miller conceived the idea of rescuing Nash, but only had a short time to organize a gang, as he was the only member in Kansas City. "Pretty Boy" Floyd had been designated "Public Enemy No. 1" by the Government and was a dangerous Oklahoma outlaw. He and Adam Richetti arrived in Kansas City about 10:45 that night. Miller contacted them about midnight and they went out to the house he was living in on Edgevale Road, in Kansas City, where he had been for about two months, evading the officers of the law.

When the train arrived, F. B. I. officer Vetterli, with police officers Hermanson and Grooms, of Kansas City, met it and accompanied three other Federal officers through the station with convict Nash, who was handcuffed, and went across the plaza to enter an automobile for the purpose of conveying Nash to the Federal Penitentiary at Leavenworth. When these seven officers reached the automobile, three of them seated themselves on the back seat of the car, and Nash was placed on the front seat under the steering wheel, with one officer beside him, and the others on the west side of the automobile. Suddenly a barrage of machine gun and pistol bullets was turned upon them by two or three men who had been lurking behind other automobiles. Con-

vict Nash and four of the officers were killed, and F. B. I. officer Lackey was wounded. Only F. B. I. officers Vetterli and Smith escaped harm. Two of the men slain were members of the Kansas City police force who had gone to the station that morning with an armored car to assist in the transfer of Nash to Leavenworth. None of the F. B. I. officers carried weapons that morning, as this was a violation of the Federal code at that time. They do carry weapons now. Chief of Police Reed, of McAllister, who accompanied the Federal officers, was armed, as were Hermanson and Grooms.

The Government instantly threw all of its resources into the capture of these criminals. They discovered that Verne Miller had been living here for several months, under cover, and that the wife of Nash had telephoned him suggesting the rescue of her husband. Both the Police Department of Kansas City and the Federal Government were working on the case and trying to apprehend the murderers. Kansas City employed a nationally known firm of detectives to aid in the capture of these criminals and later on, before anything definite was known of the murder except that Verne Miller was in it, the Federal Grand Jury assembled in Kansas City, indicting Eugene C. Reppert, Director of Police in Kansas City; Thomas J. Higgins, Chief of Detectives, and Jefferson Rayen, a police officer, on the charge of perjury, alleging that these officers had told F. B. I. officer Vetterli, in speaking of this massacre, that such massacre was a government matter, and not a city matter and they would have nothing to do with it.

Such officers denied before the Grand Jury that they had made any such statement and were thereupon in-

dicted for perjury. The Government determined to try Director of Police Reppert first. I was selected to defend him, and associated with me were T. J. Madden, William S. Hogsett, and Floyd E. Jacobs. The trial was before Honorable A. L. Reeves, a very able District Judge.

Feeling was very high, as none of the bandits had been captured and the case attracted a great deal of attention. It was one of the first cases that Honorable M. M. Milligan, District Attorney, tried, and he was ably assisted by Randall Wilson, Sam C. Blair, and Thomas Costolow, assistants. At the end of the trial, the jury returned a prompt verdict of "not guilty" and the Government thereafter decided not to try Chief of Detectives Higgins or Police Officer Rayen. The case had attracted considerable attention throughout the United States because of the articles reflecting on the police force of Kansas City and its alleged friendship for the underworld.

Later, Verne Miller was found dead, riddled with bullets, near Detroit, Michigan. "Pretty Boy" Floyd was shot to death while resisting arrest in Ohio, and Adam Richetti was captured at the same time and brought back to Missouri, and tried in the state court at Kansas City. He was sentenced to death, and was later executed in the gas chamber at Jefferson City.

The Government's theory was that the Kansas City Police Department was trying to protect persons charged with the massacre, and had protected Verne Miller in Kansas City for several months, while he was in hiding; that John Lazia, an Italian Democratic politician, caused Floyd and Richetti to aid Miller in the massacre, and obstructed the efforts of the Government to punish

the guilty. The Police Department at that time, and later, was in bad repute generally; Lazia was later shot and killed as he entered his home, and his murderers have never been apprehended.

In 1933, a bondholder of the Long-Bell Lumber Company brought suit in the Federal Court against the company and several of its subsidiaries, to have transferred back to it about twenty-six million dollars' worth of property transferred by the company to one of its subsidiaries, the Long-Bell Lumber Sales Corporation; to have a lien declared upon said property so transferred for the benefit of bondholders; to have a new set of officers appointed by the court and a receiver appointed for the purpose of operating said company on account of corporate abuses. The Long-Bell Lumber Corporation was at that time the largest and strongest lumber company in the United States, with a capital of about 150 million dollars. It owned large amounts of standing timber in the west, large saw mills, many railroads, many sales stations and practically the entire town of Longview, Washington, which had been built by it. Its founder, R. A. Long, was for fifty years one of the leading citizens of Kansas City. He was a man who had been generous with his money for charitable and religious purposes.

From about 1900 to 1929, the lumber industry of the United States was centered in Kansas City, and there were many rich and powerful lumber companies operating from this city. After the crash, almost all of these were in desperate financial condition, and most of them later went through bankruptcy or receivership.

This suit was brought by the firm of Leahy, Saunders and Walther, of St. Louis; David M. Proctor, Phineas Rosenberg, Jacobs & Henderson, and Charles P. Woodbury, of Kansas City. I was employed to assist them in this matter and did so.

In 1933, the Long-Bell company was indebted to different banks throughout the United States for more than eight million dollars, and was in default on its bonds. It was not anticipated that the company would be able to meet its future obligations. Thereupon, it organized a sales corporation with its own officers as officers in that company, and transferred to said sales corporation about twenty-six million dollars of property, including saw mills, railroads, standing timber and lumber yards scattered throughout the country. This left the Long-Bell Lumber Company with practically nothing except some standing timber and a few other assets. On July 1, 1922, said company had executed its first mortgage under which first mortgage bonds in the aggregate amount of thirty million dollars were authorized for sale. Of this issue, about twenty-eight million dollars of mortgage bonds were sold to the public, and it was agreed that a sinking fund would be created and maintained, sufficient to retire said bonds. Circulars were issued to the public, stating the security to the bondholder would be $2.00 for each $1.00 outstanding bond; 100 per cent of the face of the bonds in standing timber, and 100 per cent including plants, mills and other instrumentalities.

For years, it had been represented by the leading law firm of the south, Baker, Botts, Garwood, and Parker, of Houston, Texas. One of its members, Jesse Andrews,

came to Kansas City at the time of the bond issue, for the purpose of aiding in such issue. He intended to stay sixty days, but remained twenty years. He is today the active head of this firm in Houston, Baker, Botts, Andrews and Wharton. He is one of the ablest lawyers in the south. He was assisted in the trial by R. R. Brewster. The bondholder contended that at the time he bought his bonds he thought he had a mortgage lien on all of the assets of the Long-Bell Lumber Company, including its standing timber, its sawmills, and like equipment, its railroads, its lumber yards throughout the United States, and, in fact, everything at that time owned by said company. The mortgage was recorded in Jackson County, reciting that his only lien was timber and machinery, but, of course, like all other purchasers of bonds, he never saw or read the entire indenture, which was a very long instrument. When he discovered that the company had transferred practically all of its workable assets to the sales corporation without any consideration other than the stock of said sales corporation, he concluded his bond was of no value, because the Long-Bell Lumber Company had no instrumentalities left which could or would produce any income. He, therefore, claimed an equitable lien on all of the property so assigned, and transferred to the sales corporation on the theory that it still belonged to the lumber company and that such transfer was a fraud as to the bondholders in the lumber company.

The case was tried before Honorable Merrill E. Otis, of the Federal District Bench at Kansas City. It was necessarily laborious and involved a complete accounting of the lumber company for many years. The assistance

of many expert accountants was secured. The court held that the bondholder had no equitable lien on the assets so transferred to the sales corporation and the advertisement in the circulars did not give him such a lien, and that his bond was governed by the executed mortgage which was of record in Jackson County, and which he had never seen; that the bondholder, although having a mortgage as security, was simply an unsecured creditor and that he could not maintain a suit for the recovery of the property and receivership, and that only a judgment creditor was entitled to any relief.

The lumber company had made default under the mortgage on February 1, 1932, at which time it defaulted in the payment of bond interest, and the following April 1st and July 1st it made default in the sinking fund payments. The banks, although unsecured creditors, were being paid by the sales corporation, and the debt had been greatly reduced, although no money had been paid to bondholders. The sole issue was whether this lumber company was insolvent or not. If it were insolvent, a receiver should have been appointed. Judge Otis found it solvent and refused to appoint a receiver, and such ruling was sustained by the Eighth Circuit Court of Appeals. A few months later, the company confessed its insolvency and voluntarily went into bankruptcy and its affairs were administered by the Court and the company was entirely reorganized. It issued preferred stock in lieu of mortgage bonds and after World War II, such stock became very valuable. Those who held their stock after the receivership will more than recoup their losses. The company is doing a big business today, and is very prosperous.

XXVII

THE SWOPE MURDER CASE

Thirty years before the Leila Welsh murder, Dr. B. Clark Hyde had been accused of murdering some and of attempting to murder all of the Swope family in order that his wife might inherit the whole estate of Colonel Thomas H. Swope. The two cases are often referred to as the outstanding crimes in the history of Kansas City. Dr. B. Clark Hyde had married Frances Swope, niece of Colonel Swope, and was President of the Jackson County Medical Association and one of the outstanding physicians of his day. He was found guilty of murder in the first degree and sentenced to life imprisonment in the Penitentiary for the murder by poison of Colonel Thomas H. Swope.

When Colonel Swope died on October 3, 1909, he was a bachelor, eighty-two years of age, and possessed a fortune of about three and one-half million dollars. He lived at the home of the widow of his brother in Independence, Missouri, a small town about ten miles from Kansas City. Mrs. Swope's family consisted of five children, Sarah, Stella, Margaret and Lucy Lee, daughters; Chrisman Swope, a son, thirty-one years old; Moss Hunton, a bachelor cousin, sixty years old, and Colonel Swope. Mrs. Swope had two married children, Frances,

wife of Dr. Hyde and living in Kansas City, and Thomas, a son, living on a farm near Independence.

Colonel Swope was in bad health and in the fall of 1909 was confined to the house. His physician was Dr. Hyde, and two days before his death, Moss Hunton was seized with a stroke of apoplexy at the supper table and died that same night while being attended by Drs. Hyde and Twyman. Colonel Swope died two days later, following a convulsion. A short time later, an epidemic of typhoid fever appeared in the Swope household and nine persons were stricken, but all of them recovered except the son, Chrisman Swope, who died December 6, 1909. It was the state's theory that Dr. Hyde poisoned Colonel Swope with cyanide and strychnine; that he caused the death of Moss Hunton by excessive bleeding while treating him for apoplexy, and that he caused the death of Chrisman Swope by administering cyanide poison to him; that he attempted the life of a daughter, Margaret Swope, by injecting into her arm diphtheria germs and also by poison administered in the form of medicine. That the motive was to secure to his wife the bulk of the fortune of Colonel Swope; that Colonel Swope had made a will which Hyde knew of, bequeathing to his nieces and nephews about one and one-half million dollars, of which his wife would receive about $150,000.00, and that the death of her brothers and sisters would enlarge her fortune by the amount she would inherit from them.

Colonel Swope died about seven o'clock in the evening of October 3, 1909. At eighty-thirty that morning, Dr. Hyde gave his nurse a capsule with directions to give it to him as a digestive medicine; that within fif-

teen minutes after taking it, Colonel Swope had a convulsion, followed by coma, which lasted until his death; that an autopsy was held on his body, disclosing the presence of nearly a grain of strychnine in the liver, a small amount in the stomach and also a trace of cynanide in the stomach.

Drs. Hyde and Twyman attended Moss Hunton, and in the presence of several persons agreed that in such a case bleeding was the usual practice, and Dr. Hyde made the incision in the arm with a lancet furnished by Dr. Twyman. Some disagreement arose between them as to the amount of blood to be taken and on one occasion, Dr. Twyman suggested that he thought they had enough blood, but Dr. Hyde thought the bleeding should continue. Each of the doctors alternated in feeling the pulse, and the nurse finally took the slop jar containing the drawn blood and measured it in a silver cup and found that two quarts of blood had been taken from the patient. Hunton died in ten or fifteen minutes after the bleeding stopped. The nurse testified that a short time before his death, Dr. Hyde told her that Colonel Swope would be making a new will in a few days and asked her to try to use her influence on Colonel Swope to appoint him an executor therein, in place of Moss Hunton, which request she declined. She said he asked her again that evening as to whether she had spoken to Colonel Swope, but she did not say whether she replied or not.

The evidence clearly showed that on more than one occasion Dr. Hyde purchased cyanide of potash in capsule form, but there is no evidence that he purchased strychnine. It appears that on December 5th, the son,

Chrisman Swope, was seriously ill with typhoid fever, and that Dr. Hyde administered to him a capsule as he had to Colonel Swope, and that Chrisman had a convulsion similar to that which Colonel Swope had; that Chrisman recovered from the convulsion, but died on December 6th, with a killing temperature of 107 4/5, which the experts said meant death. It also appeared that poison does not increase temperature.

A daughter, Margaret, was given a capsule by the nurse from a box of fever capsules which had been handed her by Dr. Hyde, and shortly thereafter she had a convulsion similar to her brother Chrisman's. Dr. Twyman was called and administered a hypodermic of morphia and nitroglycerin, which caused a vomiting within two hours. The contents of the stomach were saved in a bottle and a chemical test indicated the presence of a trace of strychnine but no cyanide. Then an autopsy was held as to Chrisman Swope, and that indicated a trace of strychnine in his stomach but no cyanide.

It was admitted at the trial that strychnine will usually kill within two hours and cyanide much more quickly. The state, however, attempted to prove that by mixing strychnine and cyanide, death would be delayed, but the evidence was not very clear, as no one had ever seen it tried on a human being. The two persons whom Dr. Hyde was accused of feeding cyanide to lived for more than ten hours thereafter, and the Court thereupon reached the conclusion, on appeal, that they did not die from cyanide poisoning. There was not enough strychnine in the stomach of Colonel Swope or of Chrisman Swope to cause death, but in the liver of Colonel

Swope, Dr. Vaughn testified he found a grain of strychnine and that one-half of a grain would be a lethal dose. Only a small trace of strychnine was found in the body of Chrisman Swope and that could have been caused by the injection in his arm. This was also true of his sister, Margaret.

The Supreme Court had no difficulty in finding that there was no evidence that Dr. Hyde caused the death of Moss Hunton by excessive bleeding. Also, that there was no evidence that Dr. Hyde poisoned the son, Chrisman Swope. It was held, however, that the strychnine found in the liver of Colonel Thomas H. Swope was of sufficient quantity to cause death and that the state could, if it desired, proceed to try Dr. Hyde on that charge, but that the state could not again offer evidence regarding the deaths of Moss Hunton and Chrisman Swope. The evidence of those two deaths was offered simply on the theory of a common design to wipe out, by the same methods, an entire family in order that the defendant's wife might inherit more money. The Court held that this evidence should not have been admitted, and that one may be a notorious criminal, but that fact cannot be shown to influence a jury in passing upon the question of his guilt or innocence of a particular offense for which he is being tried. Usually, the state is denied the right to show evidence of other crimes when one is charged with a particular crime; but it has been held that evidence of other crimes may be shown for the purpose of establishing a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the other.

On one occasion, Dr. Hyde met another daughter,

Lucy Lee, in New York on her return from Europe, and gave her a drink from a cup he carried, and she developed typhoid. A short time thereafter, Dr. Hyde and his wife visited the Swope home, but refused to drink the water from a cistern in the yard. Thereafter, the typhoid epidemic broke out and one doctor testified that shortly before, he gave Dr. Hyde several typhoid culture tubes to experiment with, and it was the theory of the state that the water bottle at the Swope home and the cistern were inoculated with typhoid germs and that this caused the epidemic. The court held there was no evidence that Dr. Hyde did these acts and that as a colored servant had been taken down with typhoid on the place a short time before, it was more than likely the epidemic was caused by the unclean condition of the out-houses. The lower court was, therefore, instructed not to allow any evidence at a new trial to the effect that Dr. Hyde had caused the typhoid epidemic.

Before the trial started, Dr. Hyde was released on a $50,000 bond, but during the trial, Judge Latshaw, of the Circuit Court, set the bond aside and ordered Dr. Hyde incarcerated in prison during the remainder of the trial. Error was charged on account of this, and the Supreme Court held that Judge Latshaw should not have revoked the bond during the trial, as it may have created a bad impression on the jury.

Virgil Conkling, Prosecuting Attorney, was of the bulldog type and exceedingly aggressive. He hammered at Hyde throughout the entire trial. He was ably assisted by James A. Reed, later United States Senator from Missouri, who was employed by the Swope family as a special prosecutor. Reed had been Prosecuting Attorney of his county and Mayor of his city and it was

said that he had only lost one criminal case during his term of office. He was known as a strong prosecutor, and usually got his man.

The defendant, Dr. Hyde, was represented by Frank P. Walsh, one of the ablest trial lawyers of his day. He later moved to New York City, where he was recognized as one of its great lawyers and was named Chairman of the New York Waterways Commission. He nominated Alfred E. Smith on one occasion for Governor of New York. Associated with him was John H. Lucas, who carefully watched the record for error, and R. R. Brewster, a young lawyer of splendid ability.

The case was tried primarily by Senator Reed for the state and Mr. Walsh for the defense. They had opposed each other in dozens of trials in Kansas City, and there was great rivalry between them. The city was about equally divided as to which was the greater lawyer, and during the Hyde trial the guilt or innocence of the defendant was forgotten, but the question in everyone's mouth was, "Which one will win, Reed or Walsh?" The trial lasted more than a month. Dr. Hyde received a life sentence. After the case was reversed and remanded for a new trial, the second jury could not agree and was discharged. During the third trial, one of the jurors escaped from the jury room by climbing over the transom and the jury was discharged. The Swope family had furnished a tremendous amount of money for the prosecution, as experts were brought to Kansas City from Chicago, the University of Michigan, and elsewhere; but after the third trial, the family refused to advance any more money and the prosecution ended. Dr. Hyde's wife financed his defense and it cost her a large fortune.

An attempt was made to have Jackson County advance the money necessary for another trial, but a taxpayers' suit was instituted to prevent this from being done, and the Supreme Court of the state sustained the suit, and held that the county could not advance money for the prosecution. Dr. Hyde was thereupon released from prison and the matter ended. A short time later, an attempt was made to revoke his medical license, but he took that to court and was successful and retained his license. Some time later, his wife instituted a suit for divorce against him and it was granted. The charges were conventional. He then moved to his boyhood home, Lexington, Missouri, where he practiced medicine for many years and only died recently.

Reviewing the case thirty years later, and after carefully reading the briefs on both sides and the opinion of the Supreme Court, it is difficult to find any evidence to justify the prosecution, except for the fact of the strychnine found in the liver of Colonel Swope. This was found by only one doctor, although there were many doctors in consultation. Dr. Hyde was refused use of the material where the poison was found in order that he might have it tested. There were many mysterious factors in the case, but little proof of a crime. That the defendant had a motive could not be questioned, but how Colonel Swope lived ten hours after taking a cyanide capsule has not been explained. Also, how he lived after being given a grain of strychnine for more than ten hours was not explained. The strychnine must have been an accumulation from medicines which he had been taking. Had he been given cyanide, he would have died within a very short time. Had he been given strych-

nine to the extent of one grain, he would have died in less than two hours. Dr. Hyde was not in his presence for at least ten hours before he died.

Chrisman Swope did not die from the effects of poison because not a trace of cyanide was revealed by the autopsy, and only a very small trace of strychnine, which was accounted for by hypodermic injections given.

Moss Hunton died from excessive bleeding, but Dr. Twyman was present and no charge was made that he had any interest in Moss Hunton's death, or that he was imposed upon by Dr. Hyde. It is doubtful if Moss Hunton would have ever recovered from his stroke of apoplexy, but even if too much blood was taken from him, it was with the consent of Dr. Twyman.

Margaret Swope was a typhoid fever victim, and it is true that after she was given a capsule by the defendant, ejected the contents from her stomach while having a convulsion, but an analysis revealed a slight trace of strychnine, which was undoubtedly caused by hypodermic injections given her, but no trace of cyanide.

It is true that Dr. Hyde purchased typhoid culture tubes, but then there is no evidence that he put them in the cistern on the place or in a water cooler, and there was evidence that the outbreak of typhoid resulted from the sickness of a colored servant some months earlier.

It may be that Dr. B. Clark Hyde was responsible for these deaths, but the evidence did not so show. Given the benefit of the doubt, as guaranteed by our laws, it cannot be said that the evidence was sufficient to justify a conviction. That was the belief of the Supreme Court of Missouri. Looking at it today, it appears that Colonel Swope died at the ripe old age of eighty-two, from

senile debility or uremic poisoning; that Moss Hunton died from excessive bleeding while being treated for apoplexy; that Chrisman Swope died from typhoid fever, with a temperature of more than 107.

Colonel Swope gave Kansas City beautiful Swope Park, one of the finest in the world. It is a matter of great regret that his splendid and useful life ended in this manner.

XXVIII

GREAT TRIAL LAWYERS

The most difficult part of the law is the trial of cases, which calls for great skill and ability. The real lawyer is only found in the court room. He must know the law of both sides of the case; he must be a student of human nature and study the judge and the jury in order that his client receive a fair trial. He must master the rules of evidence, and he should always be a perfect actor, and never show disappointment when disappointed, but appear more or less nonchalant.

Darrow hit the popular fancy and has been acclaimed a great lawyer. Personally, I did not like his style and he lost most of the important cases he tried. His only great success was in defending some union officials in Idaho. He started to defend some union officials for blowing up the Los Angeles Times Building, but finally pleaded them guilty. He, himself, was indicted for alleged tampering with the jury in those cases, but he was acquitted on his second trial. He defended an American woman for the killing of her daughter's Japanese assailant in Honolulu and she was convicted. He defended two mere children in Chicago, for murder, and claimed a complete victory because the judge finally sentenced them to ninety-nine years in the Peniten-

tiary instead of hanging them. Very few, if any, judges in America would, on a plea of guilty, pronounce the death sentence on minors; and finally, William Jennings Bryan, who had not been in a court room for nearly forty years, beat him in the famous Scopes case in Tennessee.

Delmas, a brilliant trial lawyer from San Francisco, was called to New York to defend Harry K. Thaw, for the killing of his wife's seducer. He made one of the greatest defenses ever made in a criminal case and coined the phrase "dementia Americana," sometimes called the "unwritten law." His defense was that Thaw became temporarily insane when informed by his wife of the atrocities committed upon her by her assailant, and that while in this frame of mind and without knowing what he did, he killed White. The jury could not agree, and was dismissed, and a second trial ordered.

The Thaw family became offended at Delmas, discharged him and employed a noted New York lawyer, Martin W. Littleton, to try the case a second time. His defense was insanity, and his client was committed to an insane asylum, where he remained for many years. The defense of Delmas, if successful, would have completely exonerated Thaw, and I believe that Delmas could easily have had his client sent to an insane asylum had be desired to.

The greatest modern-day criminal lawyer of all of them was Earl Rogers, of Los Angeles, who died in the middle twenties. He was practically invincible in the court room and his successes were beyond belief.

Sir Edward Coke and Francis Bacon were the two greatest lawyers in the sixteenth century, and England

has never produced any lawyers comparable with either of them. One was the head of a court of equity and the other held the highest common law office in the gift of the Crown, yet both died in disgrace.

Judah P. Benjamin, who died in England in 1884, had one of the most remarkable careers of any man in history. He practiced law in New Orleans; was elected to the United States Senate from Louisiana; he withdrew from the Senate when the South seceded, was elected Senator in the Confederacy, and was later in Jefferson Davis' Cabinet. Driven from America as an outcast, he fled to England, was admitted to the Bar there, and became the outstanding lawyer of that country. He argued more cases in the appellate courts of England than any other man, and he seldom spoke more than twenty minutes. In answer to a Gentile lawyer who called him a Jew, he said:

> "It is true that I am a Jew, and when my ancestors were receiving their Ten Commandments from the immediate hand of Deity, amidst the thunderings and lightnings of Sinai, the ancestors of the distinguished gentleman who is opposed to me were herding swine in the forests of Scandinavia."

Alexander Hamilton and Aaron Burr, of New York, were the two outstanding lawyers in America during the last part of the eighteenth century. No lawyers excelled them, and like Coke and Bacon, they became bitter enemies. Hamilton was finally killed in a duel by Burr. The tragic death of Hamilton made him the popular hero, and Burr the outcast.

Daniel Webster and Rufus Choate, of Massachusetts, and Jeremiah S. Black, of Pennsylvania, were the greatest American lawyers up to and including the Civil War. Historians say that Rufus Choate was the greatest advocate that America has ever known.

The greatest American lawyers after the Civil War and up to the beginning of the twentieth century were Matt H. Carpenter, of Wisconsin, who died in 1881; William M. Everts, of New York, who died in 1901; Charles O'Connor, of New York, who died in 1884, and Joseph H. Choate, of New York, who died in 1917.

Matt H. Carpenter, after studying law in New York, settled in Beloit, Wisconsin, but later moved to Milwaukee. He was sent to the United States Senate and became recognized as one of America's greatest lawyers. His greatest act, and the greatest act of any American lawyer, was when he volunteered his services to Samuel J. Tilden, the defeated candidate for the Presidency in 1876, and appeared for him before the electoral commission at Washington appointed to decide the Hayes-Tilden contest. He prefaced his remarks by saying that he had not voted for the Democratic candidate, Mr. Tilden, but had voted for the Republican candidate, Mr. Hayes, and that if Mr. Tilden should run again, he would not vote for him; and that the accession of the Democratic party to power at that time "would be the greatest calamity that could befall our country, except one, and that one greater calamity would be to keep him out of office by falsehood and fraud."

Congress purchased his briefs after his death. The first paragraph of his epitaph reads:

"The most accomplished orator of his day and generation. He addressed no audience that he did not charm, and touched no subjects that he did not adorn. First among Senators, and foremost of statesmen."

William M. Evarts, of New York, was counsel in what were said to be the greatest three cases in the history of this country; the Andrew Johnson impeachment case, the Geneva Arbitration case, and the Hayes-Tilden presidential contest. He was also senior counsel for Henry Ward Beecher in the famous Beecher-Tilton six months' trial. He used eight days for his closing argument.

Charles O'Connor, of New York, has been said to be one of America's greatest lawyers. In his will he left eighty-six volumes of bound briefs to the Law Institute of New York, where they may be seen today. He read Blackstone at thirteen years of age; he tried cases in New York at eighteen; he was admitted to the Supreme Court at twenty-three. He owned a library of 18,000 volumes. He tendered his services to Jefferson Davis after his capture at the close of the Civil War, but the Government, after keeping Davis in prison for nearly two years, released him without a trial.

Joseph H. Choate, of New York, a nephew of the famous Rufus Choate, studied law with Mr. Evarts, and while perhaps not as able a lawyer as his uncle, he was certainly one of the most intellectual men in America. He was a great after-dinner speaker, sharing these honors with Chauncecy DePew.

Roscoe Conkling was in the United States Senate from New York for many years. After he retired, he was generally regarded as a great lawyer. He was in the Senate during Reconstruction days after the Civil War, when it looked as if the whole country and its leaders were corrupt, and had forgotten there was a God. In exonerating him from any wrongdoing, Mr. Choate, during the trial of a bitter case, when they were opposed to each other, said of Conkling:

> "However we may differ one from another, or all of us from him, we owe the Senator one debt of gratitude for standing, always, steadfast, and incorruptible in the halls of corruption. Shadrach, Meshach and Abednego won immortal fame for passing one day in the fiery furnace, but he has been twenty years there, and has come out without even the smell of smoke upon his garments."

These men were the outstanding lawyers of America in their day. They had the confidence, love, and respect of the American people. They were trial lawyers, and were always in the courtroom. The lawyer of today likewise enjoys the love and confidence of the people, as did these great men.

Lawyers are asked every day why they appear in Court for a guilty man. In the first place, they do not know that he is is guilty. In the second place, ministers of of the gospel will not refuse to see one because he is a hardened criminal; physicians will treat a bank robber caught in the act; lawyers take an oath to protect and aid the weak, helpless, and oppressed.

Senator Baker of California, after his client had been taken from jail and hanged, and he himself had been threatened by a mob, is quoted as having said:

> "The profession to which we belong is, of all others, fearless of public opinion. It has ever stood up against the tyranny of monarchs on the one hand, and the tyranny of public opinion on the other; and if, as the humblest among them, it becomes me to instance myself, I may say with a bold heart, and I do say it with a bold heart, that there is not in all this world a wretch, so humble, so guilty, so despairing, so torn with avenging furies, so pursued by the arm of the law, so hunted to cities of refuge, so fearful of life, so afraid of death; —there is no wretch so steeped in all the agonies of vice and crime, that I would not have a heart to listen to his cry, and a tongue to speak in his defense, though around his head all the wrath of public opinion should gather, and rage, and roar, and roll, as the ocean rolls around the rock. And if I ever forget, if I ever deny, that highest duty of my profession, may God palsy this arm and hush my voice forever."

In the trial of a civil suit, usually eighteen jurors are called, and the plaintiff may scratch three and the defendant three. The remaining twelve will try the case. In criminal cases, the rule is entirely different, and the defendant is usually given more challenges than the government or state.

The jury is carefully interrogated as to their business, residence, religion, politics, and views generally. These questions are asked by the lawyers on both sides, except in most Federal Courts, where the Judge questions the jurors, and will not allow the lawyers to participate. The refusal in Federal Courts to allow the lawyer to question individual jurors is of tremendous disadvantage to the defendant in a criminal case, and of great advantage to the prosecution. A lawyer should have great latitude in questioning jurors, because it sometimes requires an extended examination to disclose the fact that a juror is prejudiced.

In capital cases, where the death penalty may be inflicted, the jury is usually confined and no one can speak to them. In the ordinary criminal cases and in all civil suits, the jurors are allowed to separate.

After the jury is selected in either a civil or a criminal case, an opening statement is made by both sides and then evidence is offered. In a criminal case, the defendant is not required to testify as the law presumes he is innocent until he is proven guilty beyond a reasonable doubt. In some jurisdictions, his testimony may be limited, when he is put on the stand. After all the evidence on both sides has been presented in most state courts, the jury is instructed by the judge, in writing, and such written instructions are taken to the jury room with them, where they may be carefully read and considered.

However, in Federal Courts, written instructions are not used but after all the arguments are over, the judge delivers an oral address, in the nature of instructions to the jury. It sometimes takes hours to deliver

oral instructions in Federal Courts, and it is impossible for the jury to remember any of the instructions after it retires to its rooms. No ordinary jury is capable of understanding and remembering long oral instructions. The better practice is to instruct juries in writing, as they have benefit of such instructions when they retire and usually discuss them at great length. If they fail to understand them, they may ask the court for further instructions.

In Federal Courts, judges may comment on the evidence, and express their opinion, although they must at the same time tell the jury that it is the sole judge as to the weight to be given testimony. However, this means little, as the average jury will follow the judge, and adopt his views.

The right of trial by jury is one of the most sacred rights in America, along with the freedom of speech, freedom of the press, the right to religious worship, and the right of assembly. It must never be abolished or minimized. Every kind of effort has been made to limit or destroy it. Juries are supposed to represent a cross section of their community, but today there is great agitation to curtail the jury system by providing that only men of property and higher education be allowed to serve as jurors. There is a constant cry, particularly in many Federal Courts, to raise the educational standards of jurors and to select only wealthy jurors. This has resulted in many instances in lawyers waiving juries, and submitting the suit to a judge.

Moman Pruiett of Oklahoma City was perhaps the most successful criminal lawyer in the central part of the United States. He was twice convicted of crime,

when a youth, and served his time. It maddened him at courts, and he determined to study law, and then free as many criminals as he could. He died only a few years ago. The country was new and there was much crime. The people were used to it and it was difficult to get a conviction. What he did thirty years ago, could not be done today.

William F. Howe and Abraham H. Hummell, of the famous New York law firm of Howe & Hummell, are the only lawyers who ever made the Hall of Fame. They made the Police Gazette's Hall of Fame in the Gay Nineties, along with Buffalo Bill, Steve Brodie the high diver, Fred Taral the jockey, Lillian Langtry and Lillian Russell the actresses, John L. Sullivan the prize fighter, and Queen Victoria. They represented most of the theatrical celebrities, John Barrymore, John Drew, Nat Goodwin, Sir Henry Irving, Edwin Booth, and the famous P. T. Barnum. This firm was organized in New York right after the Civil War. It lasted until 1907, although Howe died in 1902. The firm represented nearly a thousand persons charged with murder.

While Prosecutors like to tell the public that sharp practices and perjury are responsible for their shortcomings, and their failure to convict, yet, very often, such Prosecutors are not able, legally, to cope with the good criminal lawyers. A good Prosecutor has all the best of it. He can convict any guilty person. Senator James A. Reed of Kansas City, while a Prosecuting Attorney, tried nearly three hundred criminal cases and had only two acquittals. Dewey had few acquittals. Many other able Prosecutors had an equally good record.

Probably the most famous speech ever made before a jury in the State of Missouri, if not in the United States, was made by George Graham Vest. He was born in Frankfort, Kentucky, in 1830. He moved to Sedalia, Missouri, in 1853, where he formed the firm of Vest & Phillips. He was a Senator from two republics, that of the Confederacy and of the United States. At Warrensburg, he sued for the death of a dog and recovered. His speech before the jury upon that occasion is known throughout the civilized world and is universally regarded as being the finest tribute ever paid by man to a dumb animal. Because it cannot be too often repeated or brought to the attention of each succeeding generation, I quote it below:

"Gentlemen of the Jury: The best friend a man has in this world may turn against him and become his enemy. His son or daughter that he has reared with loving care may prove ungrateful. Those who are nearest and dearest to us, those whom we trust with our happiness and our good name, may become traitors to their faith. The money that a man has he may lose. It flies away from him, perhaps when he needs it most. A man's reputation may be sacrificed in a moment of ill-considered action. The people who are prone to fall on their knees to do us honor when success is with us may be the first to throw the stone of malice when failure settles its cloud upon our heads. The one absolutely unselfish friend that a man can have in this selfish world, the one that never deserts him, the one that never proves ungrateful or treacherous, is his dog. Gentlemen of the Jury, a man's dog stands by him in prosperity and in poverty,

in health and in sickness. He will sleep on the cold ground, where the wintry winds blow and the snow drives fierce, if only he may be near his master's side. He will kiss the hand that has no food to offer; he will lick the wounds and sores that come in encounter with the roughness of the world. He guards the sleep of his pauper master as if he were a prince. When all other friends desert he remains. When all riches take wings and reputation falls to pieces, he is as constant in his love as the sun in its journey through the heavens. If fortune drives the master forth an outcast in the world, friendless and homeless, the faithful dog asks no higher privilege than that of accompanying to guard against danger, to fight against his enemies, and when the last scene of all comes, and death takes the master in his embrace and his body is laid away in the cold ground, no matter if all other friends pursue their way, there by his graveside will be be found the noble dog, his head between his paws, his eyes sad but open in alert watchfulness, faithful and true even in death."

XXIX

PERSONALITIES OF THE ENGLISH AND AMERICAN BAR

While in Boston one year, I attended a Harvard Law School banquet with John F. Rhodes, of Kansas City, a former Harvard student. It was the most unique banquet I have ever attended, as the toastmaster used only three words. Dean Roscoe E. Pound was on the program along with Professor Beall and Professor Williston. At the conclusion of the meal, the toastmaster arose and said, "Pound," whereupon Dean Pound made his usual clever speech. When his speech ended, once again the toastmaster arose and spoke the one word, "Beall." Professor Beall paid his respects to his former students who were present. Then the toastmaster said, "Williston." And Professor Williston got to his feet and spoke of the pleasure he had in attending the meeting. On this note, the banquet ended and the guests departed.

The annual meeting for the year 1940 was held in Philadelphia and was presided over by President Charles A. Beardsley. England was undergoing the blitz at that time and no English lawyers were present. However, President D. L. McCarthy, of the Canadian Bar Association, was present, along with Honorable Leonard W. Brockington, K.C., of Canada.

Mr. Brockington is the finest speaker who has ever appeared before the American Bar from either England or Canada. In addition to being a great speaker, he is a poet. I have only known one other speaker in my lifetime that had his style, and he was Honorable Webster Davis, at one time Mayor of Kansas City and in the little Cabinet of President McKinley. Brockington spoke that night of the suffering of the people in England just after his return from there. Since then he visited every battlefront and spoke to allied soldiers everywhere. His was the voice of England to the allied troops.

President McCarthy delivered a scholarly legal address. He was followed by Senator George Wharton Pepper, of Pennsylvania, one of the great orators of America. Pepper began his speech in a humorous vein, by telling a story about Calvin Coolidge while Coolidge was Vice-President of the United States. Early one evening the hotel in which Coolidge lived caught on fire. All of the guests rushed madly out as the Fire Department took charge. Some time later, when it was thought the fire was over, Calvin Coolidge started to walk up a flight of stairs to his room, when a policeman bellowed at him and ordered him back. Coolidge replied that he was the Vice-President and the policeman then told him to go ahead. Before he reached the top of the flight, the policeman once again bellowed at him, this time asking him what he was Vice-President of. Coolidge replied, "Of the United States!" The policeman then ordered him back down, saying, "I thought you were Vice-President of the hotel."

In 1941, the annual meeting of the Association was held in Indianapolis and was presided over by Presi-

dent Jacob M. Lashly, of St. Louis. One of England's greatest barristers, Sir Norman Birkett, spoke at the annual dinner, and made many friends among the American lawyers. He truly is one of England's great men and best representatives.

The Association met at Detroit in 1942. President Walter P. Armstrong presided and announced that the American Bar Association Medal "for conspicuous service to the cause of American jurisprudence" had been awarded to the Honorable Charles Evans Hughes, retired Chief Justice of the United States Supreme Court. Justice Hughes could not be present, but wrote a letter of appreciation.

The American Bar Association does not send many of its lawyers to England to appear before legal groups, although on a few occasions, some lawyers from this country have spoken in England. This practice tends to promote good fellowship between the nations and the United States should send as many of its lawyers from this country to England as England sends here. English lawyers feel at home at American Bar Association meetings and our lawyers feel at home with them. They have a quaint sense of humor and they are very brilliant. Exchange Judges and lawyers should be sent to all countries and judicial ideas exchanged.

In order to become a lawyer in England, one must live with the law. Aspirants to the bar study in Inns of Court and are in daily association with the members of the profession. Their entire time is given to the law. One cannot study law in England unless he has a fine reputation, and his character is established.

For that reason, the English people have the greatest reverence for their bar and their courts.

Lawyers are in two classes: the solicitor and the barrister. The solicitor secures the business, prepares the cases for trial and then turns them over to the barrister, who appears in court. The barrister seldom sees the witnesses until he meets them in the courtroom.

The lawyers of England have absolute control over the profession, as they should have in this country, and over the courts.

Honorable Frank B. Kellogg, a former President of the Association, in introducing the English speaker, the Most Honorable the Marquess of Reading, P.C., G.C.B., G.C.S.I., G.C.I.E., G.C.V.C., related how he had secured the aid of the speaker in getting England's Lord Chancellor to appear in the United States for the first time. He said:

> "Ladies and Gentlemen of the American Bar Association: We are greatly honored tonight by the presence, as our guest, of the Marquess of Reading, who will address you.
>
> "Twenty years ago, when I was President of the American Bar Association, I went to London on a mission to invite the Lord Chancellor of Great Britain to be the guest of the American Bar Association and deliver the annual address. Before I went, I fortified myself with a letter from Mr. Bryce, then the British Ambassador to the United States, a letter from President Taft, and Secretary of State Knox, Sir Robert Gordon, of Can-

ada, and various others, including Mr. Choate.

"With this artillery, I went over there, thinking of course that the Lord Chancellor would accept at once. He did not give me much encouragement. 'Why,' he said, 'do you know no Lord Chancellor has ever left England during the term of office since Wolsey went to France with Henry VIII, and was impeached?'

"Well, after discussing the matter and showing him the importance of the American Bar Association, and the fact that we were to hold our first meeting in a foreign country, in Montreal, he did not absolutely decline, but he gave me very little hope. Somebody told me—some friend of mine—to apply to the Attorney General of Great Britain, who is present tonight, and I did. I told him the difficulties and he said, 'Well, this is not the reign of Henry VIII (nor is Wolsey Chancellor, nor does there exist the field of the Cloth of Gold in France. I think it might be a good plan to break that tradition and set a precedent. I will see what I can do.'

"He had a dinner at his house. The Prime Minister came and several members of the Cabinet, and they concluded that it would be a good thing for the Lord Chancellor to come over as the guest of the American Bar Association; so it was arranged. The Cabinet, I believe, applied to the Privy Council—and the distinguished guest will correct me if I am wrong—and the Privy Council applied to the King, and the Great Seal was placed on the mission, and Lord Haldane came

as our guest. I do not need to remind you that the meeting was a great success.

"Now, it is unnecessary for me to recount the distinguished honors which the Marquess of Reading has received at the hands of the British Empire. In fact, I would be reading the Roll of Honor of the British Empire. He was Attorney General, Viceroy to India, Secretary of State for Foreign Affairs, Lord Chief Justice of Great Britain, Ambassador to the United States, and a great lawyer. He is one of that class of statesmen who enabled the British Empire to withstand the greatest shock of any war of history, and to pass through the most difficult period of a war, reconstruction. He is a statesman, but to us he is a great lawyer.

"I present to you the Marquess of Reading."

Robert H. Jackson, of Jamestown, New York, at one time in charge of the prosecution of war criminals in Germany and a member of the Supreme Court, had become active in the affairs of the Association in the late twenties. He was chairman of the Conference of Bar Association delegates in 1934. Going to Washington a short time after Roosevelt was elected President, as a special Assistant Attorney General, he tried the famous Andrew Mellon tax suit against Frank J. Hogan, of Washington. While attending a dinner one evening at Mr. Hogan's home, I was much amused to hear him complain about the vigor and energy which Mr. Jackson displayed in trying that suit. I quickly reached the conclusion that Mr. Jackson must have

been a splendid lawyer to disturb the equilibrium of Frank Hogan. Jackson later became Solicitor General and Attorney General, and, as a member of the House of Delegates, participated in several meetings.

David Andrew Simmons, of Houston, Texas, became active in the Association at the same time as did Mr. Jackson, and was chairman of the Conference of Bar Association delegates one year before. He was later President of the American Bar Association and is an able lawyer. At the meeting in Grand Rapids, he delivered an address on "The Law West of the Pecos," describing the manner in which justice was administered in western Texas after the Civil War by a Justice of the Peace, Honorable Roy Bean. Bean's town was Langtry, Texas, named for the famous English actress, Lily Langtry. He owned practically all of the town, set himself up as a Justice of the Peace, and married and divorced people without any authority. On one occasion, a man was found dead on the public streets with $40.00 and a pistol in his pocket. Bean fined him $40.00 for carrying concealed weapons and confiscated the pistol. Simmons delivered this lecture many times and each time it was given with the usual charm of a Southern orator.

At Boston, in 1936, the meeting was presided over by President William L. Ransom. The Right Honorable Lord Tankerton, Lord of Appeal in Ordinary, and the Right Honorable Lord Wright, Lord of Appeal in Ordinary, and Master of the Rolls, addressed the association, as did the Honorable Mr. Justice Hanna, Judge of the High Court of the Irish Free State, Sir Maurice Amos, K.B.E., K.C., Quain Professor Com-

parative Law, University College, London, England, and Honorable Leonard Brockington, K.C., of Winnipeg, Canada.

Mr. John W. Davis, of New York City, former member of Congress from West Virginia, former Solicitor General of the United States, former Ambassador to the Court of St. James, and former President of the American Bar Association, introduced these distinguished guests in his characteristic way. Mr. Davis is one of the great lawyers of the United States and he and former Chief Justice Hughes argued many cases against each other when Hughes was in the practice. I heard them many times before the Supreme Court of the United States. I once asked Mr. Davis why he never used any of his time for a closing argument, but used all of this time in his opening argument. He replied that if he could not win his case with his opening argument, he could not win it with a closing argument and that he always gave them "both barrels" in the beginning. I asked Charles Elmore Cropley, clerk of the court, which one of the two, Davis or Hughes, had the greatest successes. He informed me that the clerks in the office kept books on the winnings and losings of the two, and that for that term, Mr. Davis was one up on Justice Hughes.

The Boston meeting was addressed by two Missourians—Judge Merrill E. Otis, of Kansas City, and Honorable Charles M. Hay, of St. Louis. When Judge Otis finished his address, the entire audience arose as one person. For a moment, there was a complete silence, then great applause. In another hall, Honorable Charles M. Hay delivered an address and re-

ceived a tremendous ovation. He was a St. Louis lawyer, a great orator, and was counsel for the War Manpower Commission at Washington when he died. The American Bar Association has never produced two finer speakers than Otis and Hay. When one listened to Otis, he thought it was the best address he had ever heard, but after he heard Hay, one felt that his was the better address. Both died in 1945.

At the meeting in Kansas City in 1937, presided over by President Frederick H. Stinchfield, no English Lord appeared and our people were very much disturbed, because they wanted to see an English Lord and Lady. However, Mr. E. K. Williams, K.C., of Winnipeg, Canada, was on the program as the representative of the Canadian Bar, and delivered a splendid address. Too, Honorable Joseph B. Ely, former Governor of Massachusetts, and a very able speaker, was on the program.

One of the outstanding addresses was delivered by Robert Maynard Hutchins, President of the University of Chicago. He criticized the teaching in colleges and said he thought the present method of teaching in law schools might familiarize a lawyer with the rules of the jurisdiction, "but they did not necessarily make him an educated lawyer, understanding the law and the role of his profession in society." President Hutchins has delivered many addresses throughout America, complaining of the courses taught in colleges and schools.

My contacts with lawyers of other nations have convinced me that despite differences in speech, food, dress, mannerisms and background, that good men everywhere have similar concepts of justice.

XXX

MY ADDRESS ON AARON BURR—FRANK J. HOGAN—JAMES F. BYRNES

I have delivered many addresses before Bar Associations throughout the United States. One of the finest state meetings I have ever attended was held in Texas in 1938. David A. Simmons, of Houston, was at that time President of the Texas State Bar, and the Association met in his home town. As a tribute to him, the attendance was larger than ever before. More than fifteen hundred lawyers were in attendance and it looked like a national convention. I was on the program for an address on "Aaron Burr . . . the Lawyer." Many years before I had written a lecture on Burr, which I have delivered many times, because, to me, he has been one of the most interesting and attractive personalities in American history. Long before historians had begun to tell some of the truths about Burr, I had concluded that he was a real patriot, and that he had been misunderstood more than any man in history. Since then, these views have been accepted by all historians. In speaking of Burr, I said:

"Little has been written of this man except by those actuated with a desire to destroy his memory.

No true biography may be written today because so little has been handed down about him, and yet it has become known that that which has been written about him is, in many instances, untrue.

"For one hundred years, every school child has been taught that he was a traitor to his country, and yet every man of learning knows that his heart beat for America and that he was intensely patriotic. Recently, it has been shown that he was never actuated with a traitorous intent, but wanted to conquer Texas in order to attach it to American soil. His fight was for Texas, but he fought too early. What he tried to do was called treason, but less than thirty years afterwards, when Texas was taken from Mexico, the act was applauded.

* * * * *

"When Burr was elected Vice-President, the United States lost one of its most brilliant lawyers. Had he never been elected to this office, his troubles would never have started. He should never have entered politics, but should have remained with the law.

* * * * *

"Burr's days as Vice-President were over. He was still a popular man, notwithstanding his duel with Hamilton. That he ever dreamed of attacking the United States, as was later charged, seems impossible. What he wanted was a new country and a new

life. He could find that in the Southwest, and if later on he desired to conquer Texas, he would be prepared to do so.

"While he was in Kentucky in 1806, the District Attorney for the United States at Frankfort appeared in court and asked that Aaron Burr be compelled to attend court in answer to a charge of being engaged in an enterprise contrary to the laws of the United States, and designed to injure a power with which the United States was at peace.

"No charge was there made of any treason against the United States. The whole world was surprised and, as Burr was not in Frankfort, he did not learn of the matter until several days after the judge refused to entertain the motion. When he learned of it, he voluntarily went to Frankfort and in open court suggested to the judge that the motion of the district attorney prevail, and that the matter be presented to a Grand Jury and disclaimed any intent of levying war against the United States or any foreign country.

"He appeared at the Bar, accompanied by his counsel, Henry Clay, who later became famous throughout America. Clay had just been elected to the United States Senate, and he demanded a statement from Burr that he had never intended to attack a foreign country with which this country was at peace.

"After many delays, the matter was presented to the Grand Jury and they returned a written declaration completely exonerating Burr from any design inimical to the peace of this country.

"A great celebration was staged in Frankfort for Burr, which was attended by all of the people of that country. Burr then proceeded to Nashville and was entertained in the home of General Andrew Jackson, who later became President of the United States, and who always believed in Burr and sympathized with and aided him in all of his attempts to settle in the Southwest.

* * * * *

"Later Burr was arrested in Alabama and under orders of the administration, transported miles through the wilderness to Richmond, Virginia, where it was intended again to attempt to indict and prosecute him for some offense to be determined on.

"Burr formally presented a motion in the nature of a demurrer, asking for a directed verdict on the ground that the Government had not proven an overt act. One of Burr's counsel spoke for three days in favor of this motion and William Wirt, replying for the Government, immortalized himself.

"His speech was later set out in all of the school books of America as a masterpiece of oratory. Luther Martin, of Maryland, replied to Mr. Wirt, and also immortalized himself. He had been drinking steadily throughout the trial, but it was said of him that he was always at his best at such times.

"The Chief Justice took the motion under consideration and delivered the longest written opinion he had ever rendered, requiring three hours to

read. He held that no overt act had been proved by a single witness and that one could not be convicted in America of treason without proof by two witnesses of an overt act; that an intent to levy war was not sufficient . . . there must be an act proven; and he so instructed the jury, which retired and within a few minutes brought in a verdict of 'Not Guilty.'

* * * * *

"Was ever a man prosecuted as was Burr? First in Kentucky, then released; second in Mississippi, and released; third in Virginia before two juries and acquitted. And yet for more than one hundred years, school books have carried the story of Burr's treason to this country.

"That he was ambitious cannot be denied; that he deceived Hamilton regarding the famous water bill, which he passed in the New York Legislature in order to establish a bank, is true; that he took advantage of any situation throughout life is generally understood, but so did others in those days.

"He was no better, and certainly no worse morally, than other prominent men of his day; that Burr was guilty of intrigue and misrepresentation cannot be denied.

"But it was the intrigue and misrepresentation of the day and was indulged in by all statesmen. That Burr anticipated war between the United States and Spain is not open to question. The whole Southwest was clamoring for war. The atrocities of Spain against the border states were the most

shocking in history. Those sturdy people wanted a leader to lead them against Spain.

"That Burr had never intended to assault a city of his country cannot now be questioned; that he had never intended to invade Mexico unless and in the event war was declared is now fully understood; that the entire Southwest was with him is admitted. The only trouble was that he was thirty years ahead of his time. He lived to see his friend and associate, General Jackson, elected President of the United States. However, he died before the conquest of Mexico.

* * * * *

"On September 14, 1836, he died at the home of a friend, and was buried at Princeton by the side of his father and grandfather. Several years later, unknown friends set up a tombstone on which was inscribed:

'AARON BURR
Born February 6, 1756
Died September 14, 1836
A Colonel in the Army of the Revolution
Vice-President of the United States from
1801 to 1805'

"Thus ended the life of one of the most attractive and fascinating men of America. That he was one of the greatest lawyers ever produced by this country is certain.

"A splendid judge of human nature and always able to discover the strong points in his own case, the weak points in that of his opponent. Taken away from the office by politics, he did not have the opportunity to develop as he would have done. Yet it will always be written of him that he was the equal of any trial lawyer of his day.

"He lived thirty years too long. Had he died before his duel with Hamilton and before his estrangement with Jefferson, he would have ranked with the immortals."

Arthur T. Vanderbilt, of Newark, New Jersey, was President of the American Bar Association that year. He was scheduled for a banquet speech along with Frank J. Hogan, of Washington, D. C., his successor. When Mr. Vanderbilt was unable to be present because of illness in his family, President Simmons asked me to take his place on the program with Mr. Hogan. United States Senator Tom Connally, of Texas, was also on the program. He is one of the finest orators in America, and looks and acts like a Senator.

At this time, the fight on President Roosevelt's Court Bill had just been concluded. Everyone was proclaiming his loyalty to the Constitution of the United States and assuming that in some way the Court Bill would destroy it. Senator Connally was no exception. He declared himself in no uncertain terms to be in favor of the Constitution. Upon following him, I stated that it was not enough for a man to be in favor of the Constitution, but that he should also express himself on the Flag, sin, and motherhood. I further said that I was always sus-

picious of one who simply proclaimed his loyalty to the Constitution, but felt that he should go the whole way, and declare for the Flag, against sin, and in favor of motherhood. The Senator took this good-naturedly. I have had the pleasure of hearing him several times since in the halls of Congress.

Frank J. Hogan delivered a wonderful address, as he always did. He was one of the ablest trial lawyers in the United States and had three of its richest men as his clients—Harry Sinclair, Edward L. Doheny, and Andrew W. Mellon. It has been reported that he is the only American lawyer who has collected three one-million-dollar fees. Knowing the splendid work he did in the cases named, I am inclined to think he earned them.

Hogan and Senator James F. Byrnes, of South Carolina, were first cousins, and when Hogan's parents died, he was reared in the Byrnes' home at Charleston. He became one of Washington's greatest lawyers and Byrnes too has reached the highest pinnacle of success.

I once attended a dinner given in my honor at Mr. Hogan's home. The other guests were Senator Byrnes and wife, Senator and Mrs. Bennett Champ Clark, of Missouri, and Senator Burton Wheeler, of Montana. Senator Byrnes was at his best and was easily the outstanding figure there. In argument, he is absolutely irresistible.

The 1938 meeting of the American Bar Association was held at Cleveland, Ohio, and was presided over by President Arthur T. Vanderbilt, who also acted as toastmaster. Mr. Justice Owen J. Roberts, of the Supreme Court of the United States, delivered a splendid address. He was one of the great judges of that court.

The Right Honorable Lord MacMillan, P.C., G.C.V.O., Lord of Appeals in Ordinary, attended the meeting with his wife, Lady MacMillan. He is one of the ablest speakers England has ever sent to the United States and, unlike the conception we had of English lawyers, he has a great deal of wit. Mr. Vanderbilt twitted him about his English views, and Lord MacMillan's only answer was to tell this story regarding Mr. Vanderbilt.

He said that on one occasion, an angel came from heaven to a maternity hospital, and kissed one baby on the mouth, and that child became a great orator. The angel then kissed another baby on the forehead and that child became one of the great intellects of his day. The angel then kissed another baby on the fingers and that child became one of the world's greatest painters. He concluded the story by saying that Mr. Vanderbilt graced the chair of a presiding officer so well that he wondered where the angel had kissed him.

Justice Stanley F. Reed, of the Supreme Court of the United States, also spoke, and his address was enthusiastically received.

One of the greatest pleasures which I have had in my legal career has been my association with men of keen intellect, sparkling humor, and a concept of life which is elevating, stimulating, and zestful.

XXXI

FEDERAL JUDICIARY

The fight against the federal judiciary started in the days of Washington, Hamilton and Jefferson, and is still going on. It was brought to a head by one of the great American Presidents, Theodore Roosevelt, when, because of great abuses, he finally advocated the recall of judicial opinions. Thus, if an opinion were unsatisfactory to the majority of the people, it would be set aside on a referendum vote. This proposal was too drastic, but it shows the temper of the people at the time.

The Congress of the United States took cognizance of this condition and passed many acts limiting the jurisdiction of federal judges; notably, the Employers Liability Act which required suits brought by an employee of a railroad to be filed and tried in state courts. The "three-judge court" was created for the purpose of preventing one district judge from granting an injunction in certain cases and from declaring invalid an act passed by the legislature of a state. Before that, one district judge could nullify the action of a state legislature and could grant injunctions in all kinds of cases. Another act was the Johnson Act, denying to federal courts jurisdiction in utility rate litigation, and requiring that all such cases be first tried in state courts.

This issue came up again under President Franklin D. Roosevelt. Having reached the conclusion in 1936 that almost all legislation favorable to a majority of the people was being struck down by the Supreme Court of the United States, President Roosevelt advocated the forced retirement of any federal judge at the age of seventy years. The Supreme Court of that time was referred to as "The Nine Old Men" because most of them were aged and had been on the bench for many years. If a judge refused to resign, then the President was authorized to appoint another judge to remain on the bench until such member did resign or died, whereupon the court would go back to its normal size. An act was passed, allowing all federal judges reaching the age of seventy years and having ten years of service to resign on full pay. This was called by the opposition a court-packing plan, and one of the most bitter fights in the history of the judiciary occurred.

I have always thought that any judge reaching the age of seventy years, and with ten years of service, should resign with full pay. I have further thought that such retired judges might be used by the Government in some such capacity as ambassadors, or in some department such as the State Department, because of the great use they could be to their country. They might not be physically able to do the hard work which a judge is required to do, but their advice in governmental matters would be of great value.

The bill presented by President Roosevelt was withdrawn from Congress because the Supreme Court changed its views in many respects and sustained acts which the same court had previously held invalid. It

reversed itself several times, as in the minimum wage act of New York, which it first declared invalid, and later declared valid, and the relief act for agriculture, which it first held invalid, and then valid.

The Constitution of the United States was thought to be an enduring one because its construction more or less depends upon the condition of the country. All Presidents, in time of stress, have appointed men on the Supreme bench favorable to their views. Lincoln appointed the judge of his circuit in Illinois, David Davis, because he knew his views; Grant appointed a judge because of his known views on the legal tender act; Theodore Roosevelt appointed Oliver Wendell Holmes, of Massachusetts, after first inquiring of Senator Henry Cabot Lodge his views as to whether he was a liberal or a conservative. President Taft appointed men on the bench who agreed with his conservative views, as did Harding, Coolidge and Hoover. It was, therefore, natural that Franklin D. Roosevelt would appoint men of his views and he did appoint more men on the bench than did any President.

President Taft is quoted as having said that he was proudest of the fact that six of the nine members of the Supreme Court, including the Chief Justice, bore his commission, and he said to them, "Damn you, if any of you die, I'll disown you!"

Haines, in his work on the Supreme Court, says: "Not only did John Marshall mold constitutional law to accord with his own political convictions, but also, contrary to the claims of the mechanical school; the Supreme Court has been an important political agency from the time of its establishment in 1789 to the present

time. Presidents Washington and Adams started the trend of constitutional interpretation along partisan lines by appointing all Federalist Justices under the first and second judiciary organization acts. These Justices, with an unmistakable partisan bias, lauded the policies of the Federalist party in their charges to grand juries, and, so far as was possible, through their decisions, aided in sustaining these policies in the conduct of national affairs."

Few able judges object to criticism. They realize that in a republic like ours, a public official, drawing public pay, is bound to be criticized, and that the right of free speech guarantees this privilege. Mr. Justce Brewer, one of the great Justices, is reported to have said, "It is a mistake to suppose that the Supreme Court is either honored or helped by being spoken of as beyond criticism. True, many criticisms may be, like their authors, devoid of good taste, but better all sorts of criticism than no criticism at all."

The lawyer is often defined as an officer of the court, but that is more or less a misnomer. He does not occupy the same position to the court as do the court's appointees, the clerk, stenographer and bailiff. It is true he is sometimes licensed to practice law by the judge, but in many instances the Legislature has licensed lawyers and certain law school graduates are admitted without any examination.

Many of the greatest lawyers of history have felt obliged to admonish judges for their opinions. Senator Matt Carpenter, of Wisconsin, while arguing a case before the Supreme Court of the United States, in admonishing the judges, as he thought he should do, said:

"The Bar stands in much the same relation to the court that the prophets held to the ruling powers of the ancient dispensation. It is our duty, when the occasions require, to admonish and warn, and that, too, whether the courts will listen or whether they will refrain. There are times when general truth should have personal application, times when a prophet in Israel must say to the King of Israel, 'thou art the man.' "

As early as 1763, English judges exercised their right to criticize not only the opinion of associate judges, but the motive which actuated such opinions. One John Wilks, Esq., a member of Parliament, was prosecuted for a seditious libel and defended on the ground that a Member of Parliament could not be prosecuted for treason, felony, and the peace; and that it would be unlawful to require him to give security to keep the peace. The Crown relied largely upon a case known as the "Seven Bishops," decided by a divided court, three to one, and in refusing to follow that opinion, Lord Chief Justice Pratt said:

"Suppose a libel to be a breach of the peace, yet I think it cannot exclude privilege; because I cannot find that a libeller is bound to find security of the peace, in any book whatever, nor ever was, in any case, except one, viz., the case of the Seven Bishops, where three judges said that surety of the peace was required in the case of a libel. Judge Powell, the only honest man of the four judges, dissented; and I am bold to be of his opinion, and to say that case

is not law. But it shows the miserable condition of the state at that time. Upon the whole, it is absurd to require surety of the peace or bail in the case of a libeller, and, therefore, Mr. Wilkes must be discharged from his imprisonment.

"Whereupon there was a loud huzza in Westminster Hall. He was discharged accordingly."

XXXII

THE KROGER STORE RAPE CASE

Kroger's store on the city square at Independence, Missouri, is a busy one, and yet in 1938 a young country girl, aged 14 years, living four miles south of Independence, complained to the Prosecuting Attorney that she had been assaulted and raped in a back room of that store by three young men employees about 4 o'clock in the afternoon. She caused all three of them to be arrested. One of the boys was born and raised in my old county (Macon) and his father and some of his friends came to Kansas City to see if I could not get him out of his trouble.

I interviewed the Prosecuting Attorney, and found that the young lady was large for her age; that she frequently was in Kroger's store buying candy and chewing gum, and waiting while her parents shopped; that she knew the employees by sight, and they knew her; that while she was standing in the store, waiting for her parents to pick her up, my client, Ray, at the meat market, motioned for her to come to a room at the back of the store, which she did, and he then threw her down on the floor, and notwithstanding her struggles, ravished her; that he then went to the door and motioned for another boy to come in, and Ray went back to the meat market;

that the second boy likewise assaulted and ravished her, and that he then went to the door and motioned for a third boy, who came in, who also assaulted and ravished her.

She had written a letter to my client that night and had it in her purse when her mother found it, and that was the way the family knew about it. In the letter, she told my client that if he did not do something for her, she was going to cause him plenty of trouble. In Missouri, it is a felony punishable with death to have intercourse with a female under the age of 16 years, even with her consent.

I got all three of the young men in my office and talked with them collectively and separately many times. They denied vehemently that they had ever known the girl, and certainly had never assaulted her. I would then ask them why she would make such a charge against them and they said they had no idea, but they had never been in a room with her in their lives. I found the young lady was of good reputation, and had attended high school in Independence, but I could never find that she had known or gone with any of these boys. They had never been seen together.

The father and mother were very insistent upon a prosecution and it looked as if there was no defense. I finally concluded to take the girl's deposition, which is permitted under our practice, and took it with only an Assistant Prosecuting Attorney present. She was very frank on the witness stand and displayed a knowledge of life not usually known by a 14-year-old girl. She insisted, however, that these were the only boys that she had ever been guilty of impropriety with, and that they

assaulted her. She did not seem vindictive or malicious, and when asked if she wanted to prosecute them, said she left it entirely to her father and mother. I was not satisfied with the deposition, and yet I could find no flaw in her testimony. It was inconceivable to me that this young country girl would charge these boys with an offense that might send them to the gas chamber, and yet she had done so. I had cross-examined and questioned the boys for hours, and never once had they broken. They insisted that they were innocent.

We then commenced to secure a list of customers that were in the store that afternoon, and were fortunate enough to be able to find twelve or fifteen reliable persons who had made purchases there about the time the girl said the assault occurred. She had not claimed that she made any outcry, because she said the walls were thick and any cry would not have been heard. She did claim she struggled to the best of her ability.

I took her deposition a second time, and called her attention to the fact that all of these people had made purchases in the store at about that time, and from these boys, but she insisted that her story was true. I went over her whole life with her again, and she displayed a great familiarity with sex life, and knew as much as any married woman.

The Prosecuting Attorney by this time was convinced that something was wrong with the case, and after continuing it for several times and making many investigations, he concluded to dismiss it, which he did, and the boys were freed.

One of the peculiar things a trial lawyer encounters is the occasional false story told by some person apparently

without any rhyme or reason. In this particular case, I talked with a young high school boy in Kansas City, who told me he knew this girl very well indeed, and had been in several of her classes in a certain school; he said she had been dismissed from the school for immorality; that he knew her and her family well, and had had many dates with her. When I informed him she had never gone to that school, it did not change his views at all, but he insisted that she had.

Some people tell a story, and after it has been made public, can find no way to change it and simply stick to it. I am convinced that this young girl had a hallucination because it was physically impossible for the matter to have happened at the time and place as she told it.

The path of the human mind is often mysterious and dark, seemingly without reason or objective. Only the understanding heart can sympathize even where it cannot follow and only one who has a long perspective on the human race can forgive its shortcomings. I believe that lawyers, in the main, possess these two abilities in greater degree than any other class of people.

XXXIII

THE MURDER OF LEILA WELSH

The murder mystery of 1941 was that of Leila Welsh at 6109 Rockhill Road, Kansas City, Missouri, early Sunday morning, March 9th. Every publication carried stories of this murder for months, and even years, and today it is unsolved.

Miss Welsh was a beautiful girl 23 years of age at the time of her death. She had been born on a farm about twenty miles southeast of Kansas City. She had an older sister, Mary Frances, aged 30 years, and an older brother, George W. Welsh, Jr., aged 27. The sister had married a Colonel in the U. S. Air Forces.

The father of Leila was an invalid, under guardianship of the Probate Court, his wife being his guardian. He came from the wealthy Welsh family, had graduated in law at Michigan University and practiced for a time in Oklahoma, when on account of ill health he retired to a farm which his father gave him. The mother, Marie Welsh, came from a fine Missouri family. She, her sister and brother, had attended Missouri University. Her father met a tragic death in St. Louis many years before, where he was practicing law.

George Winston Welsh and Marie Fleming, the father and mother, first met on the campus of Missouri Univer-

sity, where they were students. Their acquaintance soon ripened into a school love affair. They were exceedingly popular with the student body and the officials of the University. He persuaded her to marry before she graduated, which she did, and they finally settled in Oklahoma, where he practiced law for several years, and then returned to Missouri, to live on the farm. They raised a family of three children. The two who remained on the farm, George Winston, Jr., and Leila, attended country grade school about a mile from their farm home, and after finishing there, attended High School at Lees Summit, Missouri, a small town about 20 miles from Kansas City. They both graduated, and about three years before the tragedy, the mother rented a small house in Kansas City and moved there with her two children, George and Leila, in order that Leila might attend Kansas City University, a co-educational school in the southern part of Kansas City. Before going to that school, Leila had attended for awhile a school in Ohio that her grandmother had been president of.

George immediately secured a job as an office boy and file clerk in one of the largest law offices in Kansas City, that of Watson, Ess, Groner, Barnett and Whitaker, where he remained for about three years. He intended to study law as his father and grandfather had, but concluded he was not fitted for law, and left his employment and accepted a position with the Real Estate Department of the City National Bank & Trust Company, one of the fine banking houses of Kansas City, where he was working on the date of the tragedy.

For about a year prior to March 9, 1941, the family, then living in Kansas City, Mrs. Welsh, her son George,

and her daughter Leila, occupied a small house close to Kansas City University at 6109 Rockhill Road. The older daughter, Mary Frances, was living in Miami Beach, Florida, with her husband. The family was supported primarily by the income from a trust estate established by the grandfather of these children, James B. Welsh, a wealthy realtor of Kansas City. The trust amounted to more than $200,000, and the income therefrom was paid to the two sons and their wives as long as they lived, and, upon their death, to the three children of George Winston Welsh. After graduating from the Kansas City University, two years before, Leila Welsh taught school in Knoxville, Illinois, but had been at home after she finished teaching in 1940.

The house faced west and contained a sitting room, dining room, kitchen, bathroom and three bedrooms, two downstairs at the northeast and northwest corners of the house, and a half bedroom upstairs, which was occupied by George. Leila had the northeast bedroom and her mother the northwest bedroom, with a small bathroom between, which was entered from a hall which led from one of the bedrooms to the other.

George and his sister Leila were very companionable and devoted to each other, and frequently double dated. They always went in the same crowd and knew the same people. Many of Leila's girl friends had dates at different times with George, and many of George's boy friends had dates with Leila. They were both very popular in their set. Leila had been engaged for a short time to a very fine young man in Knoxville, Illinois, whom she met while teaching school there. At the time of her death, she was keeping steady company with

a young man of Kansas City, although there was no understanding between them as to marriage. She had been very popular at Kansas City University and had joined one of its leading sororities, and always attended class meetings and dances. George likewise attended the dances and parties with one of Leila's friends. After leaving high school, George attended Westminster College at Fulton, Missouri, and then took a course in a business college.

The week prior to March 9, 1941, was a cold, blustery week in Kansas City and there was a heavy snowstorm on Thursday. George, whose duties with the Real Estate Department were to show houses to prospective purchasers, remained at home that day, but talked with the office several times by telephone. He never missed a night sleeping in the house while he was in Kansas City, and he and Leila and the mother had all of their meals at home.

Leila had two dates that week and had an engagement to attend a Police Circus at the Municipal Auditorium on Saturday night, March 8, 1941. It was a benefit performance for Kansas City's Police Department, which at that time was headed by Lear B. Reed, of F. B. I. fame, who had taken charge of the department the year before, after the scandals in the municipal government of Kansas City had been proclaimed to the world. Papers and magazine articles declared that Kansas City was the most wicked city in the world and that the political reign of Pendergast was the most corrupt in America. Reed was selected to correct that situation, and was doing a splendid job. He retained his position until Kansas City was again a safe American

city in which to live and then went with the armed forces.

George quit work at one o'clock on Saturday, went home and had lunch with his mother and sister. He then stayed around the house on Saturday afternoon, but his mother and sister went shopping for about an hour. At 5 o'clock that afternoon, George showed a house to a prospective customer. The three ate dinner in the dining room and George lay down on the davenport in the sitting room and soon fell asleep. Leila dressed for her date and left the house with him about 8 o'clock. He saw George lying on the couch.

They left the Police Circus shortly before midnight and went to one of the hotels in Kansas City, where they danced and had a drink or two. They arrived in front of the house at one o'clock and sat in the car for nearly thirty minutes, when the young man escorted her to the front door, opened it with her key, bade her goodnight and got in his car and returned to his house. The light was on in the sitting room, and when he opened the door he saw George again in the same position on the davenport, but neither of them spoke. Leila spoke to George as she passed him on her way to her mother's room, and he replied. She opened her mother's door and was asked if she had had a good time, and replied that she had. She then told her mother she was very tired and did not want to be awakened too early in the morning, except that she was going to church, and wanted to be awakened some time after 9 o'clock. She then kissed her mother goodnight, closed her mother's door, and went to her own room, and was never thereafter seen alive.

Sometime during the night, probably about 3 a.m., the mother was awakened by what she thought sounded like two thuds, and located the noise either in the dining room or sitting room where George had been sleeping. She got up, opened her door, went into the hall and through the dining room, and saw George still on the davenport and returned to her room. In so doing, she passed within five or six feet of Leila's bedroom door, which was closed, but did not attempt to enter the room, nor to converse with Leila.

George got up at 7 o'clock in the morning, as he had an appointment to show some houses to a man and his wife at 9:30 o'clock. He started to make some coffee when his mother awakened and finished the breakfast and the two ate in the dining room. George finally left the house shortly before 9 o'clock, went to a filling station operated by a friend of his, bought some gasoline and chatted for a short time, then went to the home of his customer and took him and his wife to see four or five houses which he opened up with keys that he had, and then about 10:30 he returned them to their house, having failed to make a sale.

Both the filling station operator and the man and his wife testified that George appeared perfectly normal, and they noticed nothing unusual about him. The houses had been advertised in the *Kansas City Star* with the name of George Welsh and his telephone number in the corner.

Shortly after 9 o'clock that Sunday morning, Mrs. Welsh attempted to open the door of her daughter's bedroom, and noticed there was some kind of obstruction holding the door and, pushing against it, shoved a chair

away from the door, which had been placed under the knob. As she entered the room, she saw the window on the north was up and also the window on the east. She walked over and lowered the window on the north, and started toward the east window. In passing the bed, she looked at her daughter and discovered that something was wrong, as there seemed to be blood on her face, although the bedclothing was pulled up close around her neck. She asked what was the matter and, receiving no reply, placed her hand on the girl's body, discovered it was cold, started screaming and rushed out of the room and across the yard to a neighbor. The neighbor came to the door and went back with her, and they again entered the bedroom, and a blood-soaked shirt, which had been in a gaping wound in Leila's throat, was touched by the neighbor and fell to the floor, disclosing a horrible, gaping wound in the neck which nearly severed the head. Mrs. Welsh was hysterical, and the neighbor called a doctor and he came over in a few minutes. At 9:42 the Police Department of Kansas City was notified that a murder had been committed, and the first police officer arrived at 9:45. The doctor had simply entered the room and observed the condition, but made no effort to examine the body.

When the police arrived, they took charge of the room and, as had the doctor, saw plain, visible footprints and blood and mud on the bedroom floor. They neglected to measure these footprints, although they testified they were made by a small foot. The pictures taken of these prints presented nothing more than a smear. They found a four and one-half-pound railroad hammer on a rug on the floor, and some mud and leaves.

The east window was still open and draped across the sill were the window drapes, as if carefully placed there, and not having the appearance of having fallen across the sill.

When the homicide squad and Chief Reed appeared later with the Coroner, and the bedclothes were thrown back, a horrible murder was discovered. The girl's skull above the right ear had been fractured in three different places so the bones could be moved by the fingers, and the throat had been cut from under the left ear to over close to the right ear, and both jugular veins, the trachea and oesophagus were completely severed to the cervicle vertebra in the neck. On the right buttock was found a circular wound where a piece of flesh about six inches in diameter had been taken, but the skin was perfectly white, and no blood of any kind was on the skin or in the veins. On this same leg, below the knee, was a figure or mark apparently made by a bloody finger, either a "G" or an "S." After cutting the throat and placing the old discarded shirt therein to keep the blood from spurting all over the room, the murderer waited approximately thirty minutes in the death room for all of the blood to leave the body. The young lady was a healthy, normal person, and her body contained five or six quarts of blood. Before the wound was made on the buttock, all of the blood had drained from the body on to the floor and had gone through two floors into the basement below. All medical authorities agreed that the wound in the buttock was not made until after all of the blood had been drained from the body.

The brother of Mrs. Welsh had been called, and started out to find young George, who was showing

houses. He found a copy of the *Kansas City Star* and located the addresses of the houses, and visited each of them, leaving a card telling George to come home, but not telling him the reason. In the next half hour, more than thirty officers from the Police Department and Sheriff's office, Prosecuting Attorney's office, and Coroner's office appeared, and the street was blocked with automobiles.

Outside the east window and about a foot therefrom was found an ordinary kitchen butcher knife stuck in the ground, with the head toward the house and several clear footprints in the soft dirt around the knife, the footprints leading eastward toward the alley, which ran north and south at the end of the lot. It had been snowing and melting, and the ground was very soft. Again, no measurements were made as to the size of the footprints, but an attempt was made to reproduce them by a plaster-of-paris cast, but on the trial these were found to be of no value.

The police carefully searched the entire neighborhood for the piece of flesh from the body, and about 2 o'clock that afternoon, in the back of a yard about 300 feet from the Welsh home, it was found. Two houses beyond this, and in the back yard, two blood-soaked cotton gloves were found, and it was the theory of the police that the murderer had fled up the alley north from the Welsh home and, from fright or some other cause, dropped the piece of flesh in one yard and the two bloody gloves in the other.

At 11 o'clock, George found one of the notes in the houses he was showing and immediately drove home. When he came to the house, he saw a great number of

cars on the street, and several people standing in the yard, and his mother being taken to an automobile at the curb by her family doctor, Graham Asher, and her sister-in-law, Mrs. Fleming. He immediately rushed to them and the sister-in-law said, "George, get in the car, and don't say anything; we will tell you all about it." His mother was moaning and crying and he put his arms around her and helped get her on the front seat with Dr. Asher. As they left, the sister-in-law told him it was Leila, but asked him to refrain from asking any questions until they got to her house, which was only a few blocks away. He administered to his mother and helped get her into the Fleming house, and then he was told about the tragedy, and nearly collapsed.

Several police officers came and talked with him, and before noon he went down to the house, but did not enter the bedroom and did not see his sister's body. He was questioned until about 2 o'clock that afternoon, when he was taken to the Police Station, and kept there until nearly midnight. He was asked if they might take his fingerprints, and readily consented. He was also asked if he could think of any reason for anyone brutally killing his sister, and he replied that he could not. He was asked about her boyfriends, and details of her life from the time she was a child. He furnished all of the information that he could on that subject. At the request of Chief Reed, he submitted himself to the lie detector, and three different tests sustained his story. A great many crimes are solved by use of this instrument, and in many police circles, it is believed to be infallible. He then requested that he be given truth serum, which is injected into the body and causes unconsciousness.

The subject is then supposed to answer any question which is asked him, as all power of resistance is gone. The department refused to use this serum because of its bad effect on other occasions.

He was shown a window sill cut from the east window and told that his fingerprints were under the sill, and he replied that he frequently sat in the window when it was up, smoking cigarettes, and threw the stubs out in the back yard; that his sister did not smoke and there were no ash trays in the room, and if he wanted to talk with her in her room, he had to sit in the window while he smoked.

On Tuesday following the tragedy, the body of Leila Welsh was taken to Carrollton, Missouri, where it was buried in the cemetery along with her father and literally hundreds of her relatives. Her grandparents were early settlers of that county, and many of the oustanding families were related to her. The mother and George accompanied the body, as did several of the relatives and friends. Today her grave is viewed by many people who go to Carrollton.

During the next few months George was repeatedly interviewed by the Police Department and the Sheriff's office, and the Prosecuting Attorney's office. On one occasion he was kidnapped by detectives as he left the bank on Saturday, and taken to a vacant house near the Missouri River, where large rocks were fastened to his body by wire, and he was told that he was going to be thrown into the river, and would never be heard of again. He was finally released and taken to the house and beaten up. His family finally located him by use of the radio, and he was returned home. On another occasion he was

interrogated for more than eight hours. Two separate grand juries investigated the case and refused to indict George Welsh. Subsequently he was indicted, tried, and acquitted.

Early in 1942, a grand jury was assembled at Independence, the county seat, and on January 28th, George W. Welsh, Jr., was indicted for murder in the first degree and placed in the Jackson County Jail. He had gone to California in the fall of 1941 and, learning of this investigation, voluntarily returned to Missouri and appeared before the grand jury, waived immunity, and testified on two or three occasions. Once he was kept on the witness stand from 2 o'clock in the afternoon until after midnight, without any food or water, collapsed, and had to be taken home. The grand jury subpenaed all of his relatives, friends, and everyone that could possibly have known anything about the case, and attempted to coerce them into testifying against the boy. Witnesses were repeatedly told the boy was a dope fiend and a marihjuana smoker, and when they denied it, they were abused. The jury at the same time was investigating perversion in Kansas City, and tried in every way to connect the boy with what was called a perversion ring, but were wholly unsuccessful.

After the indictment, the grand jury continued to investigate the murder until it adjourned more than a month later, and at the conclusion of its hearing filed a lengthy written report with the court, stating among other things that George Welsh, Jr., was guilty beyond a reasonable doubt of having brutally and violently murdered his sister; that Chief L. B. Reed, who at that

time had left the Police Department, was a dime novel detective, and had failed entirely to protect the citizens from crime; that Kansas City was a hotbed of perversion, and as Rome and Greece had fallen by reason thereof, this nation was in danger, and that, unless we were careful, the statement of Fuehrer Hitler that the United States was a nation of perverts would be proven true; that this perversion existed in every walk of life, in the banking business, real estate business, newspaper business, mercantile business, in the schools of Kansas City, and in the legal and medical professions.

I was employed to try the case and became associated with Mr. Rees Turpin, Mr. Forrest Hanna, and Mr. August H. Behrendt, and about a year later, at the trial, Mr. Roy W. Rucker assisted in the case. We filed a plea to abate and dismiss the indictment because of improper conduct of the grand jury within and without the jury room. This plea, while well recognized in Missouri practice, is unusual and attracted a great deal of attention. It was heard by Judge Emory H. Wright, one of the ten Circuit Judges. Evidence was offered that one or more of the grand jurors had left the State of Missouri, seeking evidence against George Welsh; that other members of the grand jury had gone around interviewing witnesses in different places in Kansas City, seeking evidence against him; that witnesses appearing before the grand jury were intimidated and abused, and that the report filed indicated that the grand jury, instead of being a judicial body, inquiring into the commission of crimes, was a prosecuting body, determined to indict George Welsh, regardless of the evidence. It was also shown that the County Court had donated

$2,000 to the grand jury for the purpose of aiding in the investigation and that this money was paid out by check always to "Cash," and usually cashed in a beer joint or a night club. No receipts of any kind were taken for this expenditure, and it was impossible to tell who got the money.

The Attorney General of Missouri, Honorable Roy McKittrick, and his able assistant, Vane Thurlow, along with the Prosecuting Attorney, M. W. O'Hearn, and his assistant, John W. Hill, resisted the plea, but at the conclusion of a week's hearing, Judge Wright sustained it, and the indictment was abated, and the case dismissed. The Attorney General and several of his assistants had spent weeks before the grand jury along with the Prosecuting Attorney's staff. After such dismissal, the Prosecuting Attorney announced that he would immediately file an information in one of the Justice Courts in Kansas City, again charging George Welsh with the murder of his sister. This was done and Welsh was returned to jail.

Indictments still follow the language used in England two hundred years ago, and can only be understood by a lawyer or a judge. Some day they will be modernized. The one in this case read as follows:

INDICTMENT

STATE OF MISSOURI }
COUNTY OF JACKSON } *ss:*

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI, AT INDEPENDENCE, DECEMBER TERM, 1941, BEING THE

INDEPENDENCE DIVISION THEREOF, DESIGNATED BY THE RULES OF SAID COURT AS CRIMINAL DIVISION A.

The grand jurors for the State of Missouri, duly summoned from the body of said County of Jackson, being duly impaneled, sworn, and charged to inquire within and for said County, upon their oaths present and charge that George W. Welsh, Jr., sometimes known as George W. Welsh II, of the county and state aforesaid, on the 9th day of March 1941, at the County of Jackson and State of Missouri, in and upon one Leila Welsh, then and there being, feloniously, wilfully, deliberately, premeditatedly, on purpose and of his malice aforethought, did make an assault, and with dangerous and deadly weapons, to wit, a hammer and a knife which he, the said George W. Welsh, Jr., sometimes known as George W. Welsh II, in his hands then and there had and held, he, the said George W. Welsh, Jr., sometimes known as George W. Welsh II, in and upon the head, neck, throat and body of her, the said Leila Welsh, then and there feloniously, wilfully, deliberately, premeditatedly, on purpose and of his malice aforethought, did beat, strike, cut, stab, and wound, thus and thereby, then and there feloniously, wilfully, deliberately, premeditatedly, on purpose and of his malice aforethought, with the hammer aforesaid and the knife aforesaid, giving to the said Leila Welsh, in and upon the head, neck, throat, and body of her, the said Leila Welsh, mortal wounds, of which said mortal wounds, the said Leila Welsh did languish, and languishing did live, and on the 9th day of March, in the year aforesaid, at the County of Jackson and State of Missouri, of the

mortal wounds aforesaid the said Leila Welsh died; and so the grand jurors aforesaid, upon their oaths aforesaid, do say that the said George W. Welsh, Jr., sometimes known as George W. Welsh II, here, the said Leila Welsh, at the County and State aforesaid, in the manner and by the means aforesaid, feloniously, wilfully, deliberately, premeditatedly, on purpose and of his malice aforethought, did kill and murder; against the peace and dignity of the State.

An information was filed before Joseph J. Dougherty, the oldest Justice of the Peace in service in Kansas City, and a highly respected man. The hearing took one week, and at the conclusion, the defendant, George W. Welsh, Jr., through his counsel, announced that he would only offer two witnesses, which he did, and thereupon the justice ruled that the evidence was not sufficient to justify his binding the young man over to the Criminal Court for trial, and ordered him released.

The preliminary was hotly contested, as the state had announced that it would offer all of the evidence which it had and let the matter be decided by the Justice of the Peace. It took practically a week, and offered many witnesses. After the ruling of Justice Dougherty, the Prosecuting Attorney and Attorney General immediately announced that they would file another information at once before another Justice of the Peace in Kansas City, and give the defendant another preliminary hearing. This, we objected to on the theory that where one complaint had been filed against a person, charging him with a crime, and he is released after a full and complete preliminary, that no other complaint

can be filed, but the matter must be submitted to a grand jury. The second Justice of the Peace held that he had jurisdiction and we waived a preliminary hearing; and the defendant was bound over for trial in the Criminal Court. We thereupon filed a petition in prohibition in the Supreme Court of Missouri, to prohibit a trial based upon the second complaint, but that court refused to consider the matter.

Neither the Attorney General, nor the Prosecuting Attorney, nor any of the Judges, would agree to bail, and George Welsh was in jail for about four months. In a first degree murder case, where the punishment may be death, bail may be refused if "the proof is evident or the presumption great," as stated in the Constitution, but usually in a circumstantial evidence case, bail is granted.

After Justice Dougherty dismissed the case, we filed an application for bail in the Kansas City Court of Appeals, and lodged with it the testimony taken at the preliminary hearing. The matter was carefully considered by that court, and an opinion written by Judge Nick T. Cave, ordering Welsh released from jail upon the posting of a $10,000 bond. The opinion covered the whole case, and most of it was copied by the newspapers. It gave the people of the community their first idea as to what evidence the state had. Before that, the matter was being discussed as pure gossip. The opinion told the people that the case was one of circumstantial evidence and not a very strong one at that, and did more to inform the public as to the facts of the case than anything that had happened up to that time.

Relatives and friends of the young man made the bond, and he was released. When asked by a reporter what he was going to do first when he got home, he replied, "Eat a large beefsteak." He had lost a great deal of weight in the jail, but upon taking exercises and getting out in the sun soon gained it back.

The case finally came on for hearing before Honorable A. A. Ridge, one of the able Circuit Judges of the state, on March 5, 1943, nearly two years after the crime had been committed. The same counsel appeared in the case, and again the state took one week in putting on its testimony, which was just about the same as it had used before Justice Dougherty; however, at the close of the state's case, the defendant offered many witnesses, including his mother and himself, who had not testified in the preliminary hearing.

George was connected with the crime by Joseph Alport, a second hand hardware dealer on Eighteenth Street, who testified that about five o'clock on the afternoon before the murder a young man walked into his shop and asked to look at a butcher knife; that he showed him one and priced it at a dollar and a half. The young man said the price was too high, and he showed him another one, and priced it at thirty-five cents, but finally sold it for twenty-five cents. He identified the knife found outside the window, and produced three other knives of the same kind. They were cheap, ordinary kitchen knives, found in all department stores in Kansas City. He said the young man remained in his store about thirty minutes while he sharpened the knife. He said he watched him carefully, and was positive that the young man was George Welsh, Jr.

A clerk in a hardware store in another part of the city testified that he sold a cheap pair of cotton gloves to a young man late one afternoon for ten cents, and identified George Welsh, Jr., as the man, and also identified the gloves found at the scene. He recognized George's picture in the paper during the investigation, and told several people about it, but not the police. When asked why he did not tell the policeman who passed his store every day, he said he did not know why, but that he expected one of the people he talked to would tell the police. He also said he had visions, and in one of those visions he was told that he had sold the gloves to George.

Two police officers testified that they took Alport to see George Welsh in the jail, a few days after the murder, and that Alport said he was not the man he sold the knife to; that the man he sold the knife to was shorter, and about forty years of age. Another witness testified that Alport told him that he could not identify anyone as being the person he sold the knife to.

At one of the trials I asked a young man in my office, Eugene R. Brouse, who weighs about three hundred pounds, to stand up beside me, and asked Ehrnman, the glove man, what kind of gloves he had sold Brouse the week before. Ehrnman said that he did not remember, but it must have been a new pair. At a later trial I asked him to look at Brouse again, and he readily said that he now remembered selling him a pair of leather gloves for one dollar and a quarter for his wife. Brouse was single and never had been in this store in his life.

A week before the last trial I drove by the hardware store with one of my office associates, Roy W. Rucker, and asked him to go into the store, while I waited, and

make a purchase. He came back with a dollar oven thermometer, and I marked on the box when purchased. At the trial I had Mr. Rucker stand up, and asked Ehrnman if he had ever sold him anything. He said he had not. When I showed him the thermometer, as he had wrapped it a week before, he then said that he remembered selling it to Rucker.

A fingerprint expert in the Police Department testified that he found a right forefinger print of George on top of the window sill of the east window of the bedroom, in a smear of grease and blood. He said he took several pictures of the print, but he never produced any, and none were found in the Police Department. He did produce a picture of George's fingerprint taken through Scotch tape, after it had been removed from some object. He said he took it from the top of the window sill, but the window sill showed no evidence of it. It is possible to transfer a fingerprint from one object to another. George's print could have been taken from beneath the sill, and placed on top of it. The expert testified that the fingerprints on the sill were not over forty-eight hours old. He reached this conclusion from the way the print took powder, which was sprinkled over it in order to get an impression and picture. However, all known fingerprint authorities express a doubt as to the ability of an expert to tell the age of a fingerprint. It depends upon too many changing conditions—the object on which the print is placed, hard or soft, and atmospheric conditions. A fingerprint on a hard object like glass will remain much longer than on a porous material like wood. Fingerprints are made from the perspiration of a finger, and the lines and ridges can be

easily seen by sprinkling powder over them. On a white object black powder is used, and on a black object, white powder.

The weak link in the state's case was the four and one-half-pound hammer found in Leila's bedroom. A dealer on North Main Street testified that he sold it on March 1st to a man about fifty-five years of age, and a little over five feet high and weighing about 150 pounds. George was over six feet tall, weighed more than 160 pounds and was 27 years of age.

Medical experts agreed that the murderer was right-handed, because the wound in the neck was started just under the left ear. George was left-handed. They also agreed that the murderer was well versed in anatomy, and the use of surgical instruments. And that he was a powerful man, because it required great strength to practically sever the head with one stroke.

The mother testified that she did not go into her daughter's bedroom when she heard the noise about 3 a.m., because she located it elsewhere. There is little doubt that she heard the murderer in the death room, and had she entered it to speak to her daughter, she would have also been murdered. The State kept insinuating that the mother was trying to aid her son. I asked her this last question: "Mrs. Welsh, did you love your daughter, Leila?" She replied, "Better than anything in this world."

I then put George Welsh, Jr., on the stand and he testified fully. He was severely cross-examined by the Attorney General. The last question I asked him was: "George, did you kill your sister?" He replied, "No, I loved my sister."

The testimony of the boy and his mother was very convincing. Many people who had known the family from the birth of the children testified that the children were very close to each other, and friendly and affectionate. School teachers, Sunday school teachers, relatives and friends testified that they had never seen any trouble between any of them.

The State, at the last, attempted to show a motive for the murder. A large life insurance policy was left by the boy's grandfather to his three grandchildren, George, Jr., Mary Frances and Leila, share and share alike. Upon the death of one, the survivors took that share. George and his sister Mary Frances received the share of Leila upon her death. The insurance company testified, however, that both of the survivors requested the company to keep the money, and pay them the interest, but the company declined.

The trial lasted more than one week. It was difficult to get into the courtroom, as the corridors were filled with curious people. After one whole evening had been devoted to arguments, the jury was sent to bed, and the next morning started its deliberations. Early in the afternoon it knocked on the jury door, and announced a verdict. It was: "We, the jury, find the defendant, George W. Welsh, Jr., not guilty." All the jury crowded around George and his mother and shook hands and embraced. It was a happy occasion for the Welsh family. George immediately entered the United States Army.

At the beginning of the trial, it seemed as if the city believed the brother guilty. It was treated as just another murder. The skill required was not considered. It is quite certain that the murderer was a sadistic fiend,

who killed solely for the love of killing. That the butcher knife left outside the room did not make the wound in the neck, or on the buttock. A razor or doctor's scalpel was used. That the heavy railroad hammer did not fracture the skull. It was too heavy. The hammer and knife were smoke screens.

The papers every day carry the story of some fiendish murder. The large cities are full of sadistic murderers. In many instances they have killed before. Their type is well known to police officers. Some sadist may confess to the murder of beautiful Leila Welsh before he dies.

She about whom all of this turmoil centered has forever "outsoared the shadow of our night."

XXXIV

THE MURDER OF JOHN J. GLEASON

Newspaper men are fond of saying, "When a man bites a dog, that's news!" And the following story certainly bears out this immortal quip. Frank E. Noonan, Attorney and Counselor-at-Law, forty years of age, shot and killed John J. Gleason, saloon owner and bartender, aged 57, at his saloon on Main Street in Kansas City, on the night of March 9, 1943. When a saloonkeeper kills a lawyer, that's a likely story . . . but when a lawyer shoots a saloonkeeper, that's news!

Frank Noonan had been admitted to the bar and practiced law for several years, finally securing a position on the legal force of the Police Department, where he worked for several years with Captain John J. Gleason. In charge of one of the large police stations, Gleason was regarded as a "tough copper." He and Noonan had never had any difficulties, and their relations were congenial, although not intimate. Noonan was a small, frail man, weighing about 130 pounds. Gleason was a large, powerful man, standing more than six feet, and weighing over 220 pounds. He was a terror to prisoners in his station and mistreated them at the slightest provocation. He also had been in many saloon brawls and had always come out victorious. Noonan left the depart-

ment and worked as a guard on a Government project across the line in Kansas. He was authorized to carry a revolver and had a Deputy Sheriff's Commission. Gleason, too, had left the police force when Chief Reed, of F. B. I. fame, took over the department, and for several years had been operating a saloon on Main Street.

On this particular afternoon, Noonan left his house about three o'clock to report for work at four o'clock at the Government plant. While waiting for a street car, he was picked up in an automobile by a friend who said he would drive him to work, but had to make a stop on the way. He let Noonan out at a restaurant, promised to return and pick him up, but failed to do so. Noonan then telephoned his superior that he could not get to work and remained there until after six o'clock, having a few drinks and eating some food. He then concluded to return home, and boarded a street car which required him to transfer at the corner where Gleason's saloon was located. While waiting for the car, he decided to have a drink in Gleason's place, went in, and seated himself on a stool at the west end of the bar. Gleason was behind the bar, helping the regular bartender, as there were several people seated at the counter. Noonan spoke to Gleason and started to joke with him about a political race Gleason had made for Justice of the Peace the year before. Evidently the subject was a very touchy one, because Gleason began cursing Noonan and ordered him out of the saloon. Noonan remonstrated, whereupon Gleason said, "I'll put you out."

No sooner had Gleason said these words than he started around the east end of the bar in a very belligerent manner. Apparently in a violent rage, he ap-

proached Noonan, who was still sitting on the stool. Noonan, for the first time, realized the situation and ordered Gleason to stop. Gleason did hesitate, but once again started forward. Hurriedly, Noonan pulled the revolver which he was carrying to work, from his pocket, fired one shot at Gleason for the purpose of stopping him, and Gleason fell on the floor dead.

There were at least six people in the saloon at the time of the tragedy. As usual, they all saw it differently. Unfortunately it happens that no two people see a matter alike, and this was no exception to the rule. All of the witnesses testified they heard a loud voice at the west end of the bar and all identified it as Gleason's voice. They further testified that they heard no loud words from Noonan, nor anything of an abusive nature, and that the only swearing was done by Gleason. Gleason was the aggressor, going around the east end of the bar and walking rapidly toward Noonan with a belligerent and angry manner, and was within five feet of Noonan when he was killed. A woman sitting in a booth drinking beer seemed to have the clearest view of any one. Although her deposition was taken, and she was subpoenaed, she was not called by the prosecution because her testimony was favorable to Noonan. She was placed on the stand, however, by the defendant. This hurt the prosecution, for it seemed that they were not willing to offer all of their testimony.

I became associated with Floyd E. Jacobs and Roy W. Rucker in the defense, and the case was tried just before the holidays in 1943. Naturally, the defense was justifiable homicide, or self-defense. The law, of course, permits a person to defend himself from assault. Noonan

testified that when he saw Gleason approaching him, he knew he intended to crush him with his hands or cripple him for life. He contended that he fired simply for the purpose of stopping Gleason; that he did not aim the pistol, but simply fired it quickly, and had no thought of killing Gleason. Noonan believed his life to be in danger and that, unless he stopped Gleason, he himself would be killed or maimed for life.

Numerous witnesses were put on the witness stand by the defendant to testify as to the bad reputation of Gleason for violence and turbulence, and for being a quarrelsome man. Under the law in Missouri, a man's reputation cannot be proved by specific acts, but only by his general reputation in the community in which he lives. Therefore, we were unable to put before the jury any of the numerous fights and brawls which Gleason had been in, but could ask the witness only what his general reputation was as to being turbulent, violent and quarrelsome. Each witness answered that his reputation was very bad. The Prosecuting Attorney never asked a question, so the jury never knew exactly what they meant.

We could have shown, had we been permitted, that Gleason on one occasion had assaulted a customer and, after knocking him down, had stamped upon him until the customer's wife had thrown herself on her husband's body. Then he stamped her until she was compelled to go to a hospital for four months and have a serious operation performed. We also could have proved that he became enraged in his saloon and struck a friend in the mouth with a baseball bat, knocking all his teeth out. On many occasions, he had slugged prisoners in the

police station, and then stamped upon them while they were on the floor. The rule of law which prohibits such testimony is a harsh one, because, knowing the reputation of such a man, one is more likely to go to great lengths to protect himself when he sees that he is going to be assaulted. Noonan had seen many sluggings committed by Gleason and had heard of many others. He at first had no thought of Gleason assaulting him, but when he saw Gleason's rapid approach toward him, he realized that he too was to experience the consequences of one of his terrible rages.

The only evidence which showed any particular feeling between Noonan and Gleason came from a young sailor, Clem Owens, who lived in Kansas City. At the time of the trial, he was on a battleship at Guadalcanal, and the Government flew him to Pearl Harbor, and then to San Francisco. From San Francisco, he came by rail to Kansas City to testify. He stated that the previous August he had been in Gleason's saloon about ten o'clock one morning on the last day of his furlough from Great Lakes. He was talking to the bartender, who was acting in Gleason's absence, when a tall man came in and asked for Mr. Gleason. Upon being told that Gleason was not expected down until afternoon, he pulled a revolver from his pocket, exhibited it to the bartender, and said, "Tell Gleason that Frank Noonan was in here asking for him and will be back and get him." The bartender ordered the man out of the saloon and he left. Owens identified Noonan in the courtroom as the man who exhibited the revolver and threatened Gleason. However, the records at Great Lakes Training Station showed the last day of Owens' furlough to be on Thurs-

day. It so happened that this was the birthday of Noonan's wife, and relatives had given her a noon birthday dinner at a home ten miles from this saloon. The testimony was clear that Noonan, his wife and others had left their house by street car at nine o'clock on that particular morning. Noonan could not possibly have been in the saloon.

A young lawyer, Ronald Shankland, upon learning that Owens was in town, went to his house to interview him for the defendant. He invited Owens to come to his office downtown the following day. At the appointed time, Owens went to Shankland's office, and as he entered, Frank Noonan and his wife left the office, passing by Owens, who did not recognize Noonan. Therefore, the jury thought Owens mistaken in his testimony. The sailor was then flown back to his command in the South Pacific.

The court instructed the jury that a person has a right to protect his life or his property. Therefore, if Noonan, in good faith, believed that Gleason was about to assault him and do him great bodily harm, he had a right to protect himself with any of the means at hand, even to the extent of shooting Gleason. Not one witness took the stand to testify as to the good reputation of Gleason, but several of the most prominent men in Kansas City graciously took the stand and testified to the fine reputation of Frank Noonan.

The case was bitterly prosecuted by the Prosecuting Attorney and his entire staff. However, at the end of four hours, the jury returned a verdict of "Not guilty." At this, the defendant, his wife and many of his rela-

tives present embraced each other and members of the jury. It was a glorious sight. There is no thrill which equals that of hearing such a verdict when you are defending a man in whom you believe. Nothing can equal it.

XXXV

THE GREAT MISSOURI TURKEY CASE

During the Tea Pot Dome prosecutions, Senator Nye said: "You cannot convict a million dollars." But Tom and Dick Clark, two farm boys near Columbia, Missouri, tried to convict a billion dollars when they filed a suit against the greatest feed company in America, General Mills, of Minneapolis, in 1943. Substantiating Senator Nye, they were unsuccessful.

The Clark brothers lived on a beautiful farm of 1400 acres, ten miles south of Columbia, where the University of Missouri and the Agricultural College are located. During the years 1934, 1935 and 1936, they started raising turkeys, using a feed formula furnished by the Agricultural Department of the University. They had remarkable success. Early in 1937, several representatives of General Mills appeared at the Clark farm and solicited them to buy a prepared turkey food. It was guaranteed to be a complete food, and supposedly nothing else but water was needed to supplement it. No green supplement was necessary, according to the representatives, and since it was being sold in all of the forty-eight states with remarkable success, it must be just the kind of feed the brothers needed.

Sometime later, the Clark brothers began using the turkey food and continued using it during the years 1937, '38, '39 and '40. In 1937, they were fairly successful, because the turkeys were out on green range, and this was more or less true in 1938 and a part of 1939. However, none of these years was as good as the three years when they were using the Missouri University formula. During the latter part of 1939, their losses became very heavy, and during the first part of 1940 they were having no success at all. The situation became so bad that in the spring of 1940 they set 25,000 eggs and hatched and raised only 87 turkeys. In the summer of 1939 the brothers became suspicious of the food and took the matter up with the company. General Mills sent to the farm representatives who reassured them of the food's worth and told them that turkey diseases were causing the trouble.

The Clarks knew, of course, that turkeys, like all other fowl, were subject to endemic diseases, such as trichomoniasis, coccidiosis, haxamitiasis, pullorum, turkey pox, blackhead, peresis, cholera, enteritis, and avitaminosis. But they knew, too, that, like childhood diseases in humans, in few instances were they fatal. So on many occasions they complained to the company. They suggested that perhaps the feed could be the trouble, but were advised that disease must be the trouble, since the company had received no similar complaints.

Since the Clark farm was within the shadow of the University of Missouri, the oldest institution west of the Mississippi River, and since the Veterinary Department of the University was one of the finest in the country, the brothers proceeded to take up the matter with

veterinarians there. From time to time during 1939 and the first part of 1940, the department examined and autopsied many young turkeys and always pronounced them as not having any diseases which would cause such a mortality. The brothers in turn would report the findings to the representatives of the company and would be told that the University was not equipped to conduct such tests. They insisted that General Mills had far abler men in its employ than any University could afford to employ, and that there was nothing wrong with the feed. They reiterated that the entire trouble was disease. Finally, in the summer of 1940, the Veterinary Department, after having examined more than 250 young turkeys, made a final written report which became a part of the public records of the institution. This report stated that the turkey flock was entirely free from any disease which would cause death and, consequently, that the great mortality was caused by something other than disease. This report was sent to the company, whereupon representatives went to the University to see the report, then again told the farmers the tests were wrong, that the flock was infected with disease.

More confused than ever, the Clark brothers decided to take some young turkeys called "poults" to the Nutritional Department of the University. They asked that the fowls be examined to find out whether or not the trouble was nutritional. The Department requested that they bring in some of their feed for tests, so an unopened sack of the turkey feed received from the company was taken to the University. That was the first knowledge the school had as to the kind of feed being used. The test consisted of dividing the turkeys into

two groups: feeding one group the prepared food, the other, a food known as the Missouri University formula. The results—nearly all the turkeys on the prepared food died, and most of those on the University food lived. Many other tests were made until the Nutritional Department became satisfied that the prepared food lacked certain vitamins. The department knew that there was an insufficient amount of calcium and fish oil, because the bones of the poults were brittle and rubbery, as were the beaks. Vitamins A, B, D, G, choline, biotia and Bc are known to be essential to turkey nutrition. When they are absent, a deficiency disease occurs. Vitamin A can be provided by fish oils or carotene; Vitamin B_1 (Thiamin) by grains; Vitamin D by direct sunshine; Vitamin G (Riboflavin and Pantothenic Acid) by dried milk, alfalfa meal and whey; Vitamin K by fish and dried greens. The result was the Nutritional Department made public a final report, saying the prepared food lacked certain nutritional elements, or certain vitamins, primarily A, B_1 (Thiamin), Vitamin G (Riboflavin). When the farmers received the report, they communicated it to the company; the company in turn sent representatives once again to the University, but the representatives still insisted that the report was incorrect. They further stated that the professors at the university were not sufficiently qualified to pass judgment on turkey feed, but General Mills employed the highest type of experts, far superior to any men who could be employed by the University.

Nevertheless, the Clark brothers stopped giving their fowls this feed as soon as they received the final report from the University and never thereafter used it. Late

that fall, they started with the remnants of their flock and began feeding the University formula once more. During the year 1941, 1942, and 1943, they achieved remarkable success and raised and sold thousands of fine turkeys. This completed the tenth year in the turkey business. The first three and the last three . . . when they used the University of Missouri formula . . . they had fine success. During the four years of using the prepared feed, the results were tragic.

The Clarks notified the company that they intended to claim damages for their losses on account of bad feed and filed a suit for $200,000 actual and $200,000 punitive damages. They stated that the feed had no value and that, although on the books they owed the company about $20,000, they should not be required to pay it, because the feed was injurious rather than nutritional.

Finally in the summer of 1943, the case came on for trial before Judge Merrill E. Otis in Kansas City. Mr. William H. Becker, a very able lawyer of the well-known law firm of Clark, Boggs, Peterson and Becker, of Columbia, Missouri, and former Supreme Court Judge Frank E. Atwood, of Carrollton, appeared for the Clark brothers, and Rubey M. Hulen, a well-known Missourian, and Mr. William S. Hogsett, one of the most prominent lawyers in Kansas City, appeared for General Mills. Before the case could be tried, Judge Atwood died, and I was employed to assist Mr. Becker. After the case had been on trial for a week, Hulen was appointed by President Roosevelt a Federal District Judge in St. Louis, and left the case in the very capable hands of Hogsett and his associates, Henry Depping and Robert Jackson.

A jury had been waived and the case was tried by the court. It took more than six weeks. The issues were very narrow, simply the question of whether or not the tremendous calamity which hit the Clark Brothers Turkey Farm was caused by bad feed or disease. That the Clarks had terrible results was not questioned, but it was the view of General Mills that their losses were due entirely to disease, while the brothers contended that the mortality was caused by the prepared feed which was fed the turkeys, in that it lacked certain nutritional elements and certain vitamins. The case was very carefully prepared from a nutritional and disease standpoint and many of the greatest experts in America testified. The Clarks called Dr. Durant, of the Veterinary Science Department of Missouri University, one of the outstanding men in his field in the United States; Dr. Albert G. Hogan, nationally known biochemist, Ph.D., Yale University, who is a member of all the societies in his field and the discoverer of Vitamin Bc; Drs. McDougle and Richardson, of the Missouri University, and Drs. Rohde, Albrecht and Frane, also of the University.

Dr. Frane is one of the outstanding specialists in the science of statistical analysis in the country. After taking all of the experiments that were conducted, he reached the conclusion that there were 95 chances out of one hundred that the tragedy which hit the Clark brothers' farm was caused by lack of nutrition. The outstanding expert offered by the Clarks was Dr. Anton J. Carlson, of Chicago, Illinois, Medical School, world renowned physiologist. Dr. Carlson, who received his Doctor of Philosophy degree from Leland Stanford University, has degrees from practically every country and

is one of the four or five leading scientists in the United States. Another expert was Dr. Old, University of Missouri graduate, who had been affiliated with Purdue University, Oklahoma A. & M. College, and had also been employed by the United States Department of Agriculture in Washington, D. C.

General Mills produced a vast array of scientists, among them Dr. Philip J. Schaible, Research Assistant in Chemistry at the Michigan Agricultural Experiment Station, holding a Ph.D. in Nutrition; Dr. W. R. Hinshaw, Ph.D., Cornell, Doctor of Veterinary Science, Experiment Station of the University of California; Dr. Milby, Professor of Poultry Husbandry, Oklahoma A. & M. College; Dr. Stafseth, Ph.D., Michigan State College; and Dr. Sloan, Ph.D., Cornell, and Professor of Poultry Husbandry of the University of Minnesota.

Richard Clark had written many letters and made several addresses to the effect that this turkey flock was infected with disease, and that his losses were caused from disease. On the witness stand, he admitted the writing of the letters and the making of the addresses, but said it was because he had been so advised by the company representatives. Not being an expert, he assumed that they knew. Naturally, his letters were very difficult to explain. He had written people all over the United States that he was losing turkeys like flies because of certain diseases, which he named. He claimed that his flock had all of the turkey diseases, only a few of which are fatal.

The heads of the Veterinary and Nutritional Departments of Missouri University testified that the great mortality in the flock was caused from nutritional defi-

ciency and not from disease. They further said that, as late as 1943, they had tested the improved turkey feed and that it still lacked certain vitamins necessary for the raising of turkeys. They concluded that, in their judgment, the feed was still deficient and could not be used as a complete feed, but might not be wholly worthless if supplemented by green grass or alfalfa. Dr. Old testified that the results of a test of the commercial feed which he had made in 1937 found it deficient. Several farmers from Missouri testified that they had bad results from the use of the commercial feed, but upon changing to other feed they had good results.

The experts for the feed company testified from hypothetical questions asked them. Then more than 75 farmers from the States of Arkansas, Missouri, Nebraska, Kansas, Oklahoma and Colorado were put on the stand. They all testified that they had used this prepared feed at the same time as the Clark brothers, and that they had fine results. However, in all but two instances, they further testified that they supplemented the commercial feed with green range or alfalfa.

One small girl, 13 years of age, literally held the decision in the palm of her childish hand. Barbara testified that she began raising turkeys when only nine years old and had remarkable success. She had never supplemented her feed and had kept her turkeys confined at all times. Judge Otis attached a great deal of importance to her testimony and in referring to it said: "Curiously enough, the witness who for us stands out among those called by the defendant was a little girl 13 years of age, bright, alert, refreshing, charming. She raised a little flock of turkeys on the defendant's feed, and on the

witness stand related her experience. Barbara and her flock, even as David and his 'smooth stones out of the brook,' may prove a match for giants."

The Clark brothers' losses were enormous because they had built up a great egg trade throughout the United States, and were shipping thousands of turkey eggs monthly. They lost this entire business and had to make great refunds for eggs that would not hatch. They also built up a very fine turkey market; they were selling turkeys throughout the country, and were making an enormous amount of money. They lost the use of it for four years. Altogether, they were able to prove that their damages were far in excess of $200,000. They asked punitive, or exemplary, damages in addition to actual damages on the theory that the feed company had guaranteed the feed to be suitable for the proper raising of turkeys, when it knew, or should have known, that it lacked certain vitamins. The whole question turned more or less on vitamin deficiency, and the representatives of Missouri University testified that when they tested the feed and found out that it lacked Vitamins A, B_1, and G, they reported it to General Mills. The next year, General Mills brought out a new feed and advertised it as being supplemented with Vitamins A, B_1 and G.

Judge Otis, in speaking of the importance of vitamins today, said, "Despite the words of 'the preacher, the Son of David, King in Jerusalem,' vitamins are something new under the sun. At least the word is new. Neither Shakespeare nor Milton used it; neither Samuel Johnson nor Noah Webster incorporated it in their dictionaries. The word is new and knowledge of the thing is

new, but the thing has always existed. Vitamins are essential to growth and life in men and in turkeys. And no feed for turkeys is in itself a 'complete feed' which does not contain the vitamins. There is no controversy about that." Again, in discussing vitamins, and little Barbara, Judge Otis said, "If, in the testimony of most of these lay witnesses, there was this unknown quantity of supplement from which vitamins might have been derived, there were a few who used no supplement and who found defendant's food entirely adequate. Among these was Barbara. One had to believe Barbara. Truth, innocence, and brightness adorned her even as a mantle. Her turkeys, cabined, cribbed, confined, grew and thrived and topped the market on defendant's feed. If they so much as saw a blade of grass, it was through the bars of their prison in the distant scene. Perhaps Barbara's success was providential. She deserved even that."

When the case was finally concluded, Judge Otis, in his inimitable style, handed down an opinion which has since been referred to by many writers in the same complimentary manner as were the opinions of Cardoza and Holmes. Judge Otis was not only a great judge, but his opinions were consistently very interesting, as he had powers of expression that few men have. For instance, in discussing the terrible calamity which befell the Clark brothers, he said: "The defendant could not deny that in 1940, the plaintiff's turkey project failed miserably. In that year turkeys on plaintiff's farm died like Nazis under the wheels of Stalin's Juggernaut. A season which began with 25,000 eggs ended with eighty birds fatted for the feast. It was a year of devastation. None denied it. There has been nothing like it among human kind,

except the plague in Athens, described so graphically by Thucydides, and the Black Death in London pictured so vividly by Defoe. Yet both of these calamities happened in the Clark brothers' turkey world in 1940. Noah's flood was a little more devastating (it was survived by only seven pair of turkeys). Defendant felt it must explain the disaster which plaintiff claimed was the result of malnutrition. It was not malnutrition, said defendant; it was disease, infectious disease. And here defendant chiefly relied on one witness, namely, Richard Clark, not testifying on the witness stand at the trial, but explaining in letters and other writings in 1940 the unfortunate experience of plaintiff antedating the trial. Over and over again, Mr. Clark ascribed his losses in 1940 to such diseases as pox, pullorum, and trichomononiasis."

Judge Otis was so impressed by the seventy-five users of the feed that our expert testimony could not shake him. He concluded that the calamity must have been caused from disease, because all the users in all of the different states had great success. The case was not appealed, because the expense was prohibitive. Under the Federal rules, one must print the completed record if the other side insists upon it. It is a matter of great expense to appeal a case. Some Circuit Courts allow the filing of the original transcript in the Court of Appeals, and it is not necessary to print it. It would have cost these farmers at least $4,000 to have appealed the case, and while they and their lawyers believed the decision to be wrong, they were unable to finance the appeal.

Whether or not it would have been successful, no one will ever know. All of the facts were found in favor of the farmers, but the decision was against them.

XXXVI

AN O. P. A. CASE

After the start of World War II, Congress passed an act regulating the sale of food, clothing, and all other commodities; the Office of Price Administration was established, commonly called the O. P. A. Each person in the country was issued a ration book, and coupons had to be used in order to purchase everything, from meat and gasoline to shoes. Sugar was very hard to get, and each person was given a small allotment. Commercial users, such as restaurants, were also given a certain number of coupons, based on the number of persons served and upon sales volume.

A few years before that time, a new soft drink was put on the market at Camden, Arkansas, and at the time of the war it was being sold as far north as Missouri. It was a synthetic grape drink with a lot of dextrose in it, and was called "Grapette." Franchise rights were sold in practically all of the large cities, and also in rural communities. It was in competition with Coca-Cola, Cleo Cola, Royal Cola, Pepsicola, Seven Up, and other soft drinks. It is a fine drink, and will soon be sold throughout the country.

J. M. Johnston, who lived at Springfield, Missouri, in the Ozarks, bought a franchise right to bottle and sell

Grapette in several of the Ozark counties on the Arkansas line, and one or two counties in Arkansas. The drink became very popular, and his sales were equalling many other soft drinks when World War II started.

Under the ration system, his drink, being a new one, could not get for him as much sugar as he thought he should have, so he proceeded to buy several small bottling plants and close them down after securing an allotment of sugar from the local ration board. Among other plants he bought was one at Siloam Springs, Arkansas, one at Mansfield, and another at Noel, Missouri.

He went to the ration boards in those towns and secured coupons allowing him to purchase sugar to use to make this drink, but had the sugar sent to Springfield, Missouri, where his main plant was located, and up to 1943, bottled the drink at Springfield, but served the territory in the three communities the same as they would have been if the drink had been bottled in their community. He received no more sugar than he would have received had he operated the plants in those towns.

He also served Camp Crowder, one of the largest military camps in the country, having at one time as many as 40,000 young soldiers. His sales were growing so rapidly that his competitors caused charges to be filed against him with the O. P. A., alleging that he represented to the local boards that he would use the sugar in these different communities, but instead of doing so, used it in his main plant at Springfield.

The result was the same, but the O. P. A. in its early days had enforcement officers who were very anxious to put the fear of God into everyone in the country, and they welcomed any chance to prosecute anybody. They,

therefore, prosecuted the Grapette Bottling Company, of Springfield, before a Commissioner from St. Louis.

Johnston, the owner of the plant, had lived at La Plata when I practiced law there, and he came up to Kansas City to employ me to go down and represent him. I was unable to see any violation, and certainly there was no intention of violating the law, but at the end of a week's trial the Commissioner found against Johnston and assessed the severest penalty against him that the law allowed. He denied him or the company the right to purchase any more sugar during the time sugar was rationed; he did not deny him the right to purchase sugar until the war ended, but for as long as there was sugar rationing.

This closed the plant and resulted in confiscation of his property, because it could not be used for any other purpose. I appealed the case to the Review Board in Washington, D. C., and went back there and presented it, and that body set aside the finding of the Commissioner, but ordered Johnston to pay back the excess sugar he had received by this plan. That meant that he could not buy any more sugar for three months, and as that length of time had expired since the sentence, he immediately reopened his bottling plant and Grapette was again sold in those communities.

XXXVII

THOMAS J. PENDERGAST

Few people who have lived in America have been more picturesque, or have had more colorful lives than Thomas J. Pendergast. He was born of Irish immigrant parents in the West Bottoms of St. Joseph, in the heart of the railroad and packing house district. His father owned and operated a saloon. The age itself was rough, and the place one of the toughest to be found. Young Tom had very little formal education, but early in life he learned a great deal about the art of survival in a very hard environment. While still in his early 20's, he drifted into politics, first in his ward and district, but ever on an expanding scale. I cannot here follow the steps of his progression, but ultimately, as is well known, he became the supreme political power in Missouri. It is doubtful whether any one man in the United States ever possessed more political power than he did. From 1916 to 1938, with only one or two exceptions, he nominated every state official in Missouri, and every Appellate Court judge without a single exception. At Democratic national conventions he was a great power in dictating the personnel of the nominees and the political policy of the party.

He was an officer in about eight corporations, paving

companies, liquor companies, oil companies, a life insurance company, ready mixed concrete company, and river companies, doing riprapping on the Missouri River. His companies had practically all the paving contracts, concrete contracts, building contracts and other like contracts with Kansas City and the State of Missouri, when the Democrats were in control. He sold the concrete for the Kansas City Post Office during Hoover's administration. His liquor was sold in practically all the retail liquor stores in Missouri, and he gave insurance and bonding business to friends, and other types of business to associates.

He had a close alliance with the big utility interests and had friends in every walk of life. He never appeared in public except at political conventions and went to his office early in the morning and stayed there throughout the day, interviewing his associates. He led a simple life, except on trips to Europe and race track meetings throughout the United States. He was one of the biggest bettors on race horses in the country, and it was estimated by the Government that he had lost millions of dollars.

He named all of the officials in Kansas City except those that he gave to a rival faction. In 1934 he supported Harry S. Truman, Presiding Judge of the County Court of Jackson County, for U. S. Senator, and Senator Truman was again elected in 1940, and became President of the United States when Roosevelt died. Pendergast opposed Senator Bennett Champ Clark in 1932, but supported him in 1938. He supported Senator James A. Reed at Houston and Chicago for the Democratic nomination for President and refused to make President

Roosevelt's nomination unanimous at Chicago. He was generous, gave liberally to the poor of Kansas City. At Thanksgiving and Christmas he fed thousands of people at his turkey dinners. He is known to have given away immense sums of money to the poor, jobless, and the down-and-outers.

In appearance Pendergast was formidable. He was a man of medium height but very heavily and strongly built. His blue Irish eyes were intense and keen. His manner was pleasant and agreeable.

The beginning of his downfall came with the insurance litigation in Missouri. The Government investigating income tax payments found that the insurance companies, through Charles R. Street, their representative in Chicago, had paid Pendergast nearly $500,000 as a price of the settlement, of which the Superintendent of Insurance received about $60,000. The matter was called to the attention of the three-judge court which had approved the settlement. The Court set the settlement aside and ordered the companies to return to the registry of the Court about eight million dollars which they had taken therefrom, according to the terms of the settlement. The companies returned this money to the Court as ordered. Pendergast and the Superintendent of Insurance were indicted for failure to pay income tax on this sum which they had received. They were convicted and served a term in the Penitentiary at Leavenworth.

After his release from the penitentiary, Pendergast was a man broken in health and spirit. He died within a short while. His funeral was probably the largest ever held in Kansas City. Vice-President Harry Truman flew back from Washington to attend it, and Democratic

leaders from throughout the entire middle west came. There also came thousands of humble, unknown people whom Pendergast had befriended in their hour of distress.

That Pendergast did violate the income tax law is beyond dispute, as the Government investigation of his affairs conclusively showed that for years before his conviction he had been the recipient of a million dollars a year, none of which he ever declared as income and paid a tax on. That he was guilty of political and business irregularities is probably almost certainly true. That he was personally kindly and charitable is well established. He was a faithful church attendant and was very devout. He was extremely fond of his family, lavishing upon them a vast deal of parental affection. His flair for horse racing and his great desire for money, qualities possessed by countless other Americans then and now, brought about his ruin. Like the vast majority of people, his character was a mixture of good and bad, of strength and weakness. That the political position which he occupied for so long created an unhealthy political situation in Missouri is beyond doubt, since no one man should, in a democracy, wield the power which he possessed.

With the passage of time, however, his admitted faults will be increasingly forgotten and forgiven and his virtues—and he possessed many of them—will gradually become the things about him which will be remembered. People will remember his great capacity for friendship, his ready charity, and the fact that his word, once given, would be kept regardless of subsequent circumstances. Pendergast was reared in a time and place when nice

distinctions between right and wrong were not made to as great a degree as they now are. He was brought up in an era of rugged individualism, of fierce and remorseless competition when, in order to survive at all, a man had to fight and struggle unremittingly with whatever weapons came to his hand.

There have been many men in American public life who possessed all of the faults that Pendergast possessed and without any of his virtues. He was the product of an era and its faults were his faults. His life was colorful, meteoric, and in many respects typically American. He came a very long way, along a hard and rocky road, from the West Bottoms of Kansas City to the position which he at one time occupied, both politically and financially in Missouri and in the United States.

XXXVIII

A TRIBUTE TO THE AMERICAN LAWYER

It seems perfectly obvious to me that all lawyers should be compelled to belong to the organized Bar, and to have a vote in its deliberations. Certain sections of the American Bar Association have large memberships. The insurance section, the utilities section, and the commercial section are examples. Members of these sections are lawyers who represent insurance companies, utilities and commercial agencies. They receive a special benefit because the matters in which they are interested are fully discussed and research is made throughout the year to aid them. There is no place in such sections for the average lawyer.

At one meeting I heard a prominent Kansas City lawyer make the remark that he had attended a meeting of the insurance section, and the only matters discussed were how to prepare insurance policies more favorable to the insurance companies and how to prepare laws making it more difficult to recover from an insurance company.

Such sections rendering a special service should require their members to pay a substantial membership fee which should go to the association. If all lawyers belonged to the Bar, and could have a vote in its delib-

erations, as is now proposed, the attendance would increase and the organization would be more democratic.

It is a mistake to think the people of America are not willing to trust the handling of all legal matters to the organized Bar. Since the memory of men, the lawyer in every age and in every clime has been the outstanding character in history. He has made governments and destroyed governments. At all times he has been a great moral force, and his life has been an inspiration to youth. He has been the best beloved and in some instances the most hated of men. Lawyers have framed every constitution and prepared every code of law. In the settlement of every civilization, the lawyer's has been the hand that guaranteed the security of life, property and liberty. His influence has developed civilization and made the world a better place in which to live. The rulers of all nations have charted their courses according to the wish and decision of the lawyer.

Washington was a wise and able leader, but it was the lawyer whose advice he took. Gladstone was a great statesman, but he did what his lawyers told him to do. No great financial undertaking has ever succeeded without the lawyer. So, in every walk of life, the lawyer has been predominant and has guided and shaped the destiny of his nation. Poorly paid and often misunderstood, he remains and will remain the greatest influence for good in the world.

We read of the organization and reorganization of great industrial concerns where millions and even billions of dollars are involved. It was the lawyer who made this possible, because only a legal mind could erect a structure so great. Very few men or corporations in the

United States have become rich without the aid of a lawyer.

No large bond issue can be sold in the United States without his approval. He dissolves every corporation that ceases business activities. He reorganizes companies and amalgamates companies. If lawyers were paid in proportion to the money they make for other people, they would be wealthy. A lawyer will handle reorganization proceedings where millions of dollars are involved, yet his fee will be nominal. The promoters make the money while the lawyer does the work. He is the one essential person in American business life.

Every law now in existence was written by a lawyer, as have been all deeds, wills and other conveyances. He collects yearly millions of dollars for clients and no bond is required. He preserves property and liberty for the people and, without him, the nation would be in chaos. It is true that he has often been criticized, but the criticism comes primarily from the Bar itself. Always jealous of its standing, the Bar is often too prone to criticize individual lawyers.

For years, Bar Associations have told the people of America the faults of the lawyer, and yet the people of America have elected more lawyers to office than any other class of people. Most of the Presidents of the United States, most of the Governors of the states, most of the Mayors of the cities have been lawyers. Lawyers in Congress provide the machinery for the functioning of government.

While some lawyers amass fortunes, the average income for a lawyer throughout the years is about $1600. He is carefully trained in the handling of business affairs

for others, but is often little interested in his own. Generally scrupulously honest in all of his undertakings, he is imposed upon more than any other man.

At least one-half of his life is given to the public without any thought or hope of compensation. He is active in all civic movements, in chambers of commerce, charitable organizations, religious and school organizations. He teaches Bible classes in every city and town and his voice is heard on all platforms for good government. He is the leader of all moral forces along with the ministers of the Gospel, and is the most attractive personality in all political campaigns. In every town and city in America, the lawyer is the outstanding citizen.

XXXIX

AT THE WARDMAN PARK HOTEL IN WASHINGTON, D. C.

I went to Washington, D. C., in 1946 as a special assistant to the Attorney General of the United States, the Honorable Tom C. Clark, of Texas. There are more than five thousand lawyers in the Department of Justice, which makes it the largest law office in the world.

I lived at the Wardman Park, one of the most famous hotels in the world and the fifth largest. Men and women from all over the world live there—Senators, Congressmen, Cabinet officers, foreign diplomats, Army officers and Judges, prince and pauper. They all meet in the lobby, and one thinks of the famous old hotels, the Palace in San Francisco, the Planters in St. Louis, the National in Washington, the Waldorf and Knickerbocker in New York, the Parker House in Boston, the Gayosa in Memphis and the Blossom House in Kansas City. It has all their greatness.

It is the Washington home of Senators Arthur H. Vandenberg, of Michigan; John Holmes Overton, of Louisiana; Scott W. Lucas, of Illinois; Milton R. Young, of North Dakota; Joseph C. O'Mahoney, of Wyoming; James P. Kem, of Missouri; Edward Martin, of Pennsylvania; Henry Cabot Lodge, Jr., of Massachusetts; Con-

gressmen John Davis Lodge, of Connecticut; John Albert Carroll, of Colorado; Alfred Lee Bulwinkle and Monroe Minor Redden, of North Carolina; Dan R. McGhee and William Madison Whittington, of Mississippi; Frank Fellows, of Maine; John W. Gwynne and Karl Miles Le Compte, of Iowa; Herbert A. Myers, of Kansas; Charles R. Robertson, of North Dakota; Francis Johnson Love, of West Virginia; Dwight L. Rogers, of Florida; E. C. Michener, of Michigan; Edward Eugene Cox, of Georgia; Robert F. Rich, of Pennsylvania, who always asks, "Where are you going to get the money?"; Fred M. Vinson, Chief Justice of the Supreme Court of the United States; Harold M. Stevens, Chief Justice of the United States Court of Appeals; William W. Arnold, a Judge of the Tax Court of the United States; John Wesley Snyder, Secretary of the Treasury; Cordell Hull, former Secretary of State; Henry Wallace, former Secretary of Commerce; Claire Booth Luce, the glamorous Congresswoman; Henry F. Ashurst, for thirty years a Senator from Arizona and the most popular man in Washington society.

The fight for social supremacy in Washington is fierce, and millions of dollars are spent on entertainment, but any hostess is made if Ashurst attends her parties. He was the main attraction at all of Evelyn Walsh McLean's (Hope Diamond) parties and is seen now at all receptions given by the new social queen, Mrs. Pearl Mesta, called by some "two party Pearl," because of her allegiance to the Republicans when they are in power and the Democrats when they are in. Chester C. Thompson, former Congressman from Illinois; Dr. Frank B. Gigliotti, of California, who

helped organize the American Legion after World War I, and the Cloak and Dagger after World War II, called the fabulous Gigliotti; General Carlos P. Vonder Becke, former head of the Argentine Army, now chairman of the inter-American Defense Commission; Colonels M. R. London and W. W. Dalton, of the Pentagon, the largest building in the world; James E. Duke, of tobacco fame; and Her Royal Highness Princess Victoria Marina, great granddaughter of Queen Victoria, and granddaughter of Kaiser Wilhelm, who married a lawyer from the Ozark Mountains in Missouri, and lives at Springfield.

The Wardman Park Hotel was built during World War I by an English carpenter, Harry Wardman. He started it with a ten-dollar bill and ran it up to seventy-five million by building the Shoreham Hotel, the Carleton Hotel, the Hay-Adams Hotel, the Roosevelt Hotel, the Chastleton Hotel, the Annapolis Hotel, and more than fifty apartments in Washington, and the famous Hyde Park Hotel in London. The panic in the late twenties took everything he had, and he went out of this world with just what he came in with. Washington was a "hick town" when Harry Wardman got off the train at the Union Depot, but he made it the third most beautiful city in the world, surpassed only by Paris and Madrid. A monument should be erected to him.

The guests sit around the spacious lobby at night and talk about Washington, from the time John and Abagail Adams did their washing in the East Room of the White House and the men bathed on one side of the Potomac and the women on the other side. They tell of General Dwight G. Eisenhower leaving his apartment to take

over the command of the troops in Europe; of Frank Knox, Secretary of the Navy, watching ship movements from his apartment; of "Cotton" Ed Smith, of South Carolina, who, although deaf, could hear the word "cotton" if whispered, and Senator Ashurst, who never failed to hear the word "copper"; of Strickland Gillilan, of "Off again, on again, gone again" fame, telling stories in the lobby; of Senator Boies Penrose, the large Senator from the Union League in Philadelphia, weighing more than three hundred pounds, and who had to be taken out of a window when he died. Of his ordinary evening meal in the hotel, consisting of a dozen raw oysters on the half shell, a large bowl of chicken gumbo soup, a terrapin stew, two canvasback ducks, mashed potatoes, lima beans, macaroni, asparagus, cole slaw and stewed corn, one hot mince pie, a quart of coffee, one bottle of sauterne, a quart of champagne and several cognacs. When he finished he thanked the maitre d'hotel and said he had had a-plenty.

They tell of John Randolph, of Roanoke, walking into the Senate booted and spurred, with a riding whip in his hands and pack of hounds at his heels. Of John White, of Kentucky, who when retiring as Speaker of the House employed a ghost writer to prepare his farewell address, and how the writer copied Aaron Burr's address, and White committed suicide when he read the comments in the papers. Of Senator Thomas Hart Benton, of Missouri, having his servants bring to the Senate several hams, turkeys, roast beef, champagne and whiskey to hold his supporters in the chambers while he was having the resolution censoring Andrew Jackson expunged from the record. Of how Martin Van Buren

presided over the Senate with two pistols; and Davy Crockett, the frontiersman and hunter who wrote the life of Van Buren, whom he hated, and later died at the Alamo. Of Senator Franklin Pierce, of New Hampshire, falling into a ditch where the Statler Hotel stands; and of Henry Waterson getting in the ditch with him after he could not pull him out. Of Webster and Clay borrowing ten thousand dollars from a bank on Pennsylvania Avenue, and never paying it back. Of Thaddeus Stevens, the radical leader of reconstruction days who was a great poker player, and who, in order to keep Simon Cameron out of Lincoln's Cabinet, so he could get in, told Lincoln that Cameron was dishonest. Lincoln said, "You don't mean to say that you think Cameron would steal!" "No, I don't think he would steal a red hot stove," said Stevens. Lincoln thought it was such a good story that he told Cameron, who became very angry and demanded a retraction from Stevens. Stevens agreed and went to Lincoln and told him that Cameron had demanded that he retract and said, "I will now do so. I believe I told you that he would not steal a red hot stove. I now take that back." Of Dan Sickles, of New York, who shot and killed Philip Barton Key, the handsomest man in Washington society, in front of the Cosmos Club, after his wife had confessed to meeting Key every afternoon in a house between K and L Streets on 15th, while Sickles was attending to his duties as a Congressman from New York. How Sickles was acquitted and lost a leg at Gettysburg, and President Lincoln sent him on a mission to Panama to keep him away from the White House and Mary Todd Lincoln. And how he became the lover of Queen Isabella of Spain

while United States Minister there, and how she left the throne for him, and he was called the "Yankee King of Spain." Of John McLean, Associate Justice of the Supreme Court of the United States, being a candidate for President six times while on the bench. Of the political campaign of 1884, when Grover Cleveland defeated James G. Blaine, and the Democrats marched down Pennsylvania Avenue, chanting:

> Blaine, Blaine, James G. Blaine,
> The continental liar from the State of Maine,
> *Burn that letter.*

and how the Republicans countered with:

> Ma! Ma! Where's my pa?
> Gone to the White House.
> Ha! Ha! Ha!

Of Calvin Coolidge when he appointed John Garibaldi Sargent, from the small village of Ludlow, Vermont, Attorney General of the United States and said to him: "Gary, I want you to sit on the lid and do nothing." Sargent took him at his word. And of the time Coolidge's father died and was buried in Vermont—and a close friend of the family was in Europe. Upon his return he went to the White House and said: "Mr. President, I am sorry to learn that you buried your father last week." Coolidge replied: "We had to; he died."

Of sad-mad-bad John Wilkes Booth, who killed President Lincoln. He was the son of Junius Brutus Booth, and a brother of Edwin Booth, and a greater actor than

either of them. His last appearance was at Ford's Theatre in Washington just twenty-seven days before he shot Mr. Lincoln in the same theatre. His last audience "was unusually demonstrative and manifested its appreciation of his efforts by stamping on the floor and loudly cheering when he appeared." To this day it is not known why he shot the President. The war was over and there was nothing to be gained.

Many Congressmen play contract bridge and Oklahoma gin rummy for nothing—they will not play for any stake. Every Friday night some of the top flight Senators, Congressmen, Cabinet members and Judges meet at the Wardman Park and play a dollar limit straight five card high draw poker game. They never play wild games like pairs wild, red cards wild, or suit wild, and no low cards. The dealer antes a quarter and they play a close game. They can open the pot on jacks or better, but they wait for three of a kind or a straight, and sometimes they play till nearly midnight and the pot is never opened—they then divide the "kitty" and go home.

The members of Congress are very hard workers, and keyed up to a high pitch all the time. They are considering the most complicated and difficult world and national questions and, seeing them daily, one wonders how they stand the strain. They are sad when any associate is defeated, because they know it may be them next. They seldom resign and only quit when they die or are beaten. They all think of the last letter written by the immortal Daniel Webster, who once served as they serve:

"If I were to live my life over again with my present experience, I would under no circumstances allow myself to enter public life. The public are ungrateful. The man who serves the public most faithfully receives no adequate reward. No, no; have nothing to do with politics."

XL

THE CONCLUSION OF THE WHOLE MATTER

It has been my good fortune to live in a time and place of action and interest. I have seen and have had intimate contact with the lives of many people. The panorama of America has unfolded before me. I have known the struggles, the stresses and strains, the hopes, despairs and triumphs which are the lot of mortal man. Out of it all I have come with a profound respect and love for humanity. Not all people are noble and good, but a great majority of them are, and even in the worst of them there are always some qualities of fineness. To have lived, worked and struggled with them has been a great experience. From my association with people I have come to some definite conclusions upon which I would act more fully if I had my life to live again, and which certainly will be motivating forces in the remainder of it. One is that the great majority of people can be trusted to do the right thing a great part of the time. Another is that people cannot be too closely regulated. They cannot be protected against themselves and others to too great an extent. Many things they can learn only by personal experience, by trial and error. And only through a large degree of self-dependence can they ever learn self-reliance.

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